UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Chief Bankruptcy Judge
Sacramento, California

May 28, 2002 at 9:00 a.m.

THE RULINGS ARE DIVIDED IN TWO PARTS. TENTATIVE RULINGS COME FIRST (ITEMS 1-32) AND THE FINAL RULINGS (ITEMS 33-137) FOLLOW. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS IN THEIR CASE NUMBERS.

"FINAL RULING" MEANS THAT THERE WILL BE NO HEARING. IT DOES NOT NECESSARILY MEAN THAT THE COURT WILL ENTER AN ORDER FINALLY RESOLVING THE MATTER ON CALENDAR. IF ALL PARTIES HAVE AGREED TO CONTINUE OR RESOLVE A MATTER BY STIPULATION, THEY MAY SO ADVISE THE COURTROOM DEPUTY CLERK AND THE FINAL RULING WILL BE VACATED IN FAVOR OF THE CONTINUANCE OR THE STIPULATION. IF YOU CANNOT ADVISE THE COURTROOM DEPUTY CLERK AT THE HEARING, MAKE PROVISION FOR VACATING THE FINAL RULING IN YOUR ORDER.

BECAUSE THE CALENDAR IS LENGTHY, THE COURT HAS DIVIDED THE TENTATIVE RULINGS INTO TWO GROUPS. THE HEARINGS ON THE FIRST GROUP OF MATTERS WITH TENTATIVE RULINGS (ITEMS 1-20) WILL BEGIN AT APPROXIMATELY 9:00 A.M. THE SECOND GROUP (ITEMS 21-32) WILL BE CALLED BEGINNING AT APPROXIMATELY 10:00 A.M. THESE TIMES ARE APPROXIMATE. HOWEVER, EACH GROUP WILL BE CALLED NO EARLIER THAN THE INDICATED TIME.

THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER.

Matters called beginning at 9:00 a.m.

1. 00-24902-A-13J NARENDRA T. SHARMA — HEARING - MOTION TO WITHDRAW AS ATTORNEY OF RECORD 5-1-02 [118]
SAC #5

Tentative Ruling: The motion is granted. The debtor has informed counsel that he wishes to (again) proceed without the assistance of counsel. The debtor has the right to represent himself. Therefore, the motion is granted. Counsel shall indicate in the order the debtor's address for purposes of future service of pleadings, return to the debtor all of his property, and provide to the debtor the original or a copy of his file.

2. 01-31106-A-13J ERIK/CYNTHIA BENSON — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 5-13-02 [31] PART III
SW #1
GENERAL MOTORS ACCEPT. CORP., VS.

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part III. If the debtor, the trustee, or any other party in interest appears in opposition to the motion, the court will assign a briefing schedule and a final hearing

date and time. If no one appears in opposition to the motion, the court will take up the merits of the motion.

3. 02-24807-A-13J PATRICIA TILLMAN
WAJ #1
EDDIE AMUNEKE, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
5-6-02 [7]
PART II

Tentative Ruling: The movant leased residential real property to the debtor. Prior to the filing of the petition, the movant successfully prosecuted an unlawful detainer action in state court and was awarded possession of the subject property. It has been issued a writ of possession.

Given the filing of the unlawful detainer judgment and the notice to quit that necessarily preceded it, the debtor's right to possession has terminated and there is cause to terminate the automatic stay. In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989). The debtor no longer has an interest in the subject property which can be considered either property of the estate or an interest deserving of protection by section 362(a).

Additionally, this petition was filed on April 29, 2002. A plan, schedules, and the statement of financial affairs should have been filed on May 14, 2001. Fed.R.Bankr.P. 1017(c) & 3015(b). The documents have not been filed. This fact, plus the filing of the petition to prevent the enforcement of the writ of possession, suggests that the petition was interposed solely for the purpose of delaying the movant rather than in an effort to reorganize the debtor's personal finances.

The stay is modified to permit the movant to seek possession of the property. No fees and costs are awarded. The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived.

4. 01-29108-A-13J SALLY NICKALOFF
KBR #1
HOMEQ SERVICING CORP., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
4-26-02 [18]
PART II

Tentative Ruling: Movant seeks relief from stay with respect to Debtor's real property, located at 8899 Salmon Falls Drive, #C in Sacramento, California. Movant is secured by a deed of trust encumbering the property. Debtor's plan requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtor has not made approximately two (2) post-petition payments (March 2002 through April 2002) to Movant, for a total of $385.56. Debtor opposes the motion, stating that she has cured the delinquency.

Debtor has provided the court with copies of three money order receipts. The receipt at the top of Exhibit A has the date 4/3/02 handwritten on it, without the payment amount. The receipt at the

bottom of Exhibit A has an amount listed, but it is not dated; only "April/May" is handwritten on the receipt. The receipt in the middle of Exhibit A is Debtor's January 2002 payment, which is listed on the accounting provided by Movant. The court cannot ascertain that Debtor has cured the delinquency because the receipts provided by Debtor are missing payment amount and date of payment information. Accordingly, unless Movant acknowledges at the hearing that the default alleged in the motion has been cured, the motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay. Because the loan documentation provided by Movant contains no attorney's fee provision, the court awards no fees and costs.

5. 99-30015-A-13J LINDA D. BIRNER — HEARING - DEBTOR'S MOTION TO AMEND PLAN 4-24-02 [104]
CLH #5

Tentative Ruling: The motion to confirm the chapter 13 plan is denied and the objection is sustained. First, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling $1,475.00. The plan does not comply with 11 U.S.C. § 1325(a)(6). Second, the proposed plan does not comply with 11 U.S.C. § 1325(a)(4). Taking into account the scheduled value of assets, the amount of secured claims, the scheduled amount of the unsecured claims, and the debtor's exemptions, the plan must pay a dividend equal to $26,000.00 to unsecured creditors in order to match what they would receive in a chapter 7 liquidation as of the effective date of the plan. The plan promises no dividend. While the debtor apparently maintains that the scheduled accounts receivable were not collectible, there is no evidence of this nor has Schedule B been amended.

6. 01-21622-A-13J NADIE L. SAVAGE — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 4-25-02 [49] PART II
PSP #1
CHASE MANHATTAN MORTGAGE CORP., VS.

Tentative Ruling: Movant seeks relief from stay with respect to Debtor's real property, located at 8680 Opp Court in Elk Grove, California. Movant is secured by a deed of trust encumbering the property. Debtor's plan requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtors have not made approximately three (3) post-petition payments (February 2002 through April 2002) to Movant, for a total of $3,956.40. Debtor opposes the motion, stating that Movant's accounting does not reflect two payments Debtor purportedly made in March and May of 2001. Debtor acknowledges not having made the April 2002 installment and proposes to cure it by modifying her plan. Debtor anticipates to file a newly modified plan by May 24, 2002.

Unless Debtor files a modified plan curing the April 2002 delinquency by the date of the hearing, the court will grant this motion.

7. 01-34122-A-13J THOMAS/SHERRI CURNOW — HEARING - TRUSTEE'S MOTION TO CONVERT CASE TO A CHAPTER 7 PROCEEDING OR IN THE ALTERNATIVE DISMISS CASE 4-15-02 [22]
JPJ #2

Tentative Ruling: The motion is granted and the case is converted to chapter 7. The debtor is seriously in arrears of the proposed plan. The debtor has failed to pay at least $2,295.12 in plan payments. Second, the debtor has violated the obligation imposed by 11 U.S.C. § 521(3) & (4) by giving the trustee a monthly profit and loss statement for the period from November 2001 through February 2002, proof of insurance, and proof of payment of post-petition sales taxes. Third, even if the proposed plan payments were current, it could not be confirmed. Taking into account the stream of payments promised by the plan and the amount of claims to be paid, the plan will not be completed within 60 months as required by 11 U.S.C. § 1322(d). It will take 83 months to complete the plan. Fourth, the plan neglects to provide for a secured claim of Union Bank as required by 11 U.S.C. § 1325(a)(5).

Opposition was filed. It does not contest any of the foregoing. It merely states that a further amended plan has been filed. While the amended plan may cure the last two problems mentioned above, it does not explain why the debtor has failed to make plan payments nor demonstrate an ability to make future plan payments. Further, the debtor has not explained or excused his failure to cooperate with the trustee.

Given that there is nonexempt equity in assets of approximately $28,225.00, conversion to chapter 7 rather than dismissal is in the best interests of creditors.

8. 00-23827-A-13J BRUCE/RHONDA BENVENTANO — CONT. HEARING - MOTION TO CONFIRM SECOND MODIFIED CHAPTER 13 PLAN 2-26-02 [70]
WW #3

Tentative Ruling: The objection makes the assertion that the debtor is not eligible for chapter 13 relief. However, this petition was filed on March 31, 2000 and a plan was confirmed on August 25, 2000. It is now too late to ask for dismissal on the grounds of eligibility. This should have been raised at the beginning of the case. Since eligibility is not a jurisdictional matter, the objection has been waived.

Further, the objection based on the failure to value the claim of the creditor is overruled. The court valued the creditor’s collateral pursuant to 11 U.S.C. § 506(a) and Fed.R.Bankr.P. 3012 at the beginning of the case. The effective date of the plan, including the modified

plan, is the date of the petition. Claims are determined as of that date. There is no need to re-value collateral for the purpose of determining the creditor's secured claim. This has been done. The effective date of the plan is not changing so there is no need to revalue collateral.

The court also overrules the objection based on the assertion that "the sale of real property [to] fund a Chapter 13 plan is not allowed." This is simply wrong. There is nothing in 11 U.S.C. § 109(e) that requires a debtor to pay claims only from future disposable income. It requires only that a debtor must have some disposable income. A plan may be funded in part by disposable income and by proceeds from the sale or refinance of real property in order to pay claims. See In re Gavia, 24 B.R. 573, 575 (B.A.P. 9th Cir. 1982) ("[W]e construe [section 1322(b)(8)] as permitting a plan to supplement payments from future income.").

However, the court agrees that the debtor cannot refinance the property because to do so would require that the objecting creditor's lien be stripped off the property before the completion of the plan. That is, while the court has valued the collateral of the creditor at $0.00 pursuant to In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997) [see also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000), the lien of the creditor remains on the property until the plan is completed. Accord, In re Moore, 275 B.R. 390 (Bankr. D. Colo. 2002).

Debtors cannot obtain confirmation of a plan that would allow them to demand release of a secured creditor's lien prior to the completion of all payments under their plan and entry of a discharge. See, e.g., In re Thompson, 224 B.R. 360 (Bankr. N.D. Tex. 1998); Matter of Pruitt, 203 B.R. 134 (Bankr. N.D. Ind. 1996); In re Scheierl, 176 B.R. 498 (Bankr. D. Minn.1995); In re Jones, 152 B.R. 155 (Bankr. E.D. Mich. 1993); In re Zakowski, 213 B.R. 1003 (Bankr. E.D. Wis. 1997). These cases note the lack of specific language allowing for early release of liens under a Chapter 13 plan. See, e.g., In re Pruitt, 203 B.R. at 137 (the court noted that had Congress intended for a lien to be released upon payment of the secured portion of a claim, it would have drafted section 1325(a)(5)(B)(i) to require that a plan provide the secured creditor retain its lien "until the creditor receives full payment of the allowed secured claim.").

Also 11 U.S.C. § 1307(b) gives a debtor an absolute right to dismiss a case ex parte at any time without a showing of cause. After such dismissal, 11 U.S.C. § 349(b) reinstates "any lien avoided under section 506(d) of this title. . . ." If a debtor were permitted to effectively strip off a lien prior to completion of the plan and to sell or hypothecate the previously encumbered property, then the debtor could dismiss the petition and section 349(b) would be rendered moot. It would be impossible to reinstate the stripped lien.

Therefore, the plan is not feasible. It depends on using the property encumbered by the objecting creditor's lien as collateral for a new loan or selling the property. Of course any new lender would want a deed of trust that was senior to the objecting creditor's deed of trust and any buyer would want title free and clear of it. The plan, however, will pay nothing to the objecting creditor. The debtor cannot do this. If the debtor completes the plan, he will be entitled to the property free and clear of the objecting creditor's lien. The debtor cannot get free and clear title to it in order to complete the plan.

9. 01-32729-A-13J LAITH YOUNIS YACOUB
MWB #2

HEARING - MOTION FOR ORDER AUTHORIZING WITHDRAWAL OF ATTORNEY OF RECORD
4-29-02 [48]

Tentative Ruling: The motion to withdraw as counsel is granted. The debtor has failed to cooperate and communicate with counsel regarding this case. This is cause to withdraw. Counsel shall indicate in the order the debtor's address for purposes of future service of pleadings, return to the debtor all of his property, and provide to the debtor the original or a copy of his file.

10. 02-21630-A-13J RAY/LAURA DRAKE
JAH #1
MOREQUITY, INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
4-26-02 [13]
PART II

Tentative Ruling: Movant seeks relief from stay with respect to Debtors' real property, located at 5251 38th Avenue in Sacramento, California. Movant is secured by a deed of trust encumbering the property. Debtors' plan requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtors have not made approximately three (3) post-petition payments (February 2002 through April 2002) to Movant, for a total of $1,701.10. As additional basis for the motion, Movant contends that Debtors have allowed the lapse of the insurance coverage on the property. Debtors oppose the motion, stating that they have cured the delinquency and that they will provide Movant with proof of insurance coverage on the property at the hearing.

Debtors have provided the court with satisfactory evidence that they have cured the delinquency. Accordingly, the motion is denied without prejudice, on the condition that Debtors present Movant with proof of insurance coverage on the property at the hearing.

The loan documentation contains an attorney's fee provision and Movant is an over-secured creditor. Fees and costs of $675 or, if less, the amount actually payable by Movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that Movant's proof of claim is amended and served upon the Trustee.

11. 02-21634-A-13J JOSE/CARMEN YANEZ
USA #1
U.S.A., DEPT. OF H.U.D., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
5-3-02 [11]
PART II

Tentative Ruling: Movant seeks relief from stay with respect to Debtors' real property, located at 1320 Trail End Way in Sacramento, California. Movant is secured by a deed of trust encumbering the property. Debtors' plan, which identifies Movant as First Madison Services, requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtors have not made approximately four (4) post-petition payments (February 2002 through May 2002) to Movant, for a total of $3,697.96. Debtors oppose the motion, stating that: 1) they have made the March and April installments; and 2) they will make the May installment prior to the hearing on the motion.

While Movant states that Debtors are four payments delinquent, Debtors' opposition assumes that they are only three payments delinquent. Debtors state nothing about curing the fourth payment. Debtors' failure to cure all of the outstanding post-petition payments to Movant is cause for the granting of relief from stay. Accordingly, the motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d). The loan documentation contains an attorney's fee provision and Movant is an over-secured creditor. Fees and costs of $675 or, if less, the amount actually payable by Movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against Movant's collateral. This award may not be enforced against Debtors personally. However, if Debtors wish to cure the loan default, these fees must be paid by Debtors directly to Movant.

12. 02-22336-A-13J CHARLES/MANDY PHILLIPS
SW #2
GMAC, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
5-8-02 [23]
PART II

Tentative Ruling: Movant seeks relief from the co-debtor stay with respect to Debtors' 2001 Chevrolet Monte Carlo vehicle. Debtors' first amended plan schedules Movant's claim as a class 1 secured claim, payable outside the plan. Movant seeks relief from the co-debtor stay on the grounds that: 1) Debtors' Chapter 13 plan does not pay Movant's claim in full; and 2) Movant's interest in the vehicle would be irreparably harmed by continuation of the co-debtor stay. 11 U.S.C. §§ 1301(c)(2)&(3). Debtors oppose the motion, stating that they have modified their plan to pay Movant's claim in full, outside of the plan.

Since Debtors' first amended plan provides for payment of Movant's claim in full, the court finds that no grounds for relief from stay

under 11 U.S.C. § 1301(c)(2) exist. Nonetheless, according to Movant's information sheet, Debtors are not maintaining insurance coverage for the vehicle. Debtors have not addressed the lack of insurance coverage issue. Lack of insurance coverage is cause for the granting of relief from stay. Accordingly, the motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded.

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that Movant's collateral is being used by the debtor without compensation and is depreciating in value. Because Movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

13.	01-22237-A-13J SW #3 WELLS FARGO FIN. ACCEPT., VS.	ISMAEL/MICHELLE HERNANDEZ	HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 5-8-02 [56] PART II

Tentative Ruling: Movant seeks relief from stay with respect to Debtors' 1998 Ford Taurus. Debtors' plan schedules Movant's claim as a class 2 secured claim, payable through the plan. Allegedly, Debtors are $810 delinquent in plan payments to the Trustee and the subject vehicle has no insurance coverage. Debtors admit the delinquency. Nonetheless, they oppose the motion, stating that: (1) they will cure the default by May 24, 2002; and (2) they are providing the court and Movant with proof of insurance coverage for the vehicle.

Debtors have not provided the court with satisfactory evidence of the vehicle's insurance coverage. The evidence provided indicates that the deductible for the comprehensive and collision coverages is $1,000.00. The contract requires no more than $500.00.

In light of Debtors' representation that they will cure the delinquency by May 24, 2002, the motion is granted in part pursuant to 11 U.S.C. § 362(d)(1). Debtor is at least $810 delinquent in plan payments to the Trustee. If this outstanding amount, plus the May 2002 plan payment, are not received by the Trustee on or before the May 31, 2002, or if evidence of insurance coverage that complies with the contract is not received by counsel for the movant by May 31, 2002, the stay will be terminated on the ex parte application of the movant (if supported by a sufficient declaration establishing a default of the order). Upon service of the order on Debtors, Debtors' counsel, and the trustee, the movant is authorized to repossess the vehicle and dispose of it in accordance with applicable law.

Because Movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

14. 02-22239-A-13J LAWRENCE HAROLD BLATTEL
RDW #1
TMS MORTGAGE, INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
5-6-02 [10]
PART II

Tentative Ruling: Movant seeks relief from stay with respect to Debtor's real property, located at 4863 Vogelsang Drive in Sacramento, California. Movant is secured by a second deed of trust encumbering the property. Debtor's plan, which identifies Movant as Home Eq, requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtor has not made approximately two (2) post-petition payments (March 2002 through April 2002) to Movant, for a total of $461.60. Debtor opposes, stating that Movant has not been sending "any [post-petition] monthy [*sic*] statement, bill, or cupon [*sic*] setting out the sum due to Movant and address where mortgage payment can be made," despite Debtor's attempt to tender post-petition payments to Movant.

General Order 01-02, ¶ 9 states: "*A creditor secured by real property that is the debtor's principal residence shall continue to mail to the debtor, the automatic stay notwithstanding, the customary monthly statement or payment coupon unless and until a plan is confirmed which provides for surrender of the real property to the creditor.*" Based on the opposition, the court concludes that the movant has not obeyed the General Order. It may refile this motion when it has obeyed and the debtor has failed to tender all post-petition payments within a reasonable time.

No fees and costs are awarded.

15. 01-30241-A-13J BRYAN K. YATES
PSP #1
PRINCIPAL RESIDENTIAL MORT., INC., VS.

CONT. HEARING - RESTORED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-17-01 [12]
PART II

Tentative Ruling: None. Appearances required unless the parties have settled the matter. This will be a status conference only. Given the prior unsuccessful attempt to resolve this matter, the court will set an evidentiary hearing at which time all witnesses must appear. The parties will comply with Local Bankruptcy Rule 9017-1.

16. 01-34748-A-13J JOY L. HUSMANN
KK #1
CONSECO FINANCE CORPORATION, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
5-3-02 [21]
PART II

Tentative Ruling: Movant seeks relief from stay with respect to Debtor's real property, located at 173 Arbuckle Avenue in Folsom, California. Movant is secured by a deed of trust encumbering the property. Debtor's plan requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtor has not made approximately four (4) post-petition payments (January 2002

through April 2002) to Movant, for a total of $5,136.56.

Debtor opposes, stating that she will cure the delinquency prior to the May 28, 2002 hearing. Larry Taylor, a state court appointed receiver for an unspecified estate, also opposes the motion for relief, stating that someone by the name of David Anderson "has provided one thousand seven hundred Seventy Seven dollars to the Receivership estate and a check was written to [Movant] by this Receiver for $3,601.00 on December 27, 2002," "[w]hich was subsequently . . . returned to the estate account." The receiver requests that the court: (1) denies the instant motion; (2) orders Movant to "accept the current monthly payments;" and (3) allows him to sell the subject property.

The state court appointed receiver has provided the court with insufficient background information for the court to consider the receiver's opposition. From the information provided in the receiver's opposition, the court cannot determine whether the receiver is a party in interest. In any event, even if the court construes the receiver's opposition as a motion to sell the subject property, the opposition does not comply with the notice requirements of Federal Rule of Bankruptcy Procedure 2002(a). Moreover, the receiver may not have the authority to decide whether to sell the property since the property belongs to the bankruptcy estate. Lastly, the court cannot compel Movant to accept funds from a non-debtor party, such as the receiver. Hence, the receiver's requests are denied without prejudice.

In light of Debtor's opposition, the motion is granted in part pursuant to 11 U.S.C. § 362(d)(1). Debtor has undisputedly not paid approximately four (4) post-petition direct payments required by the plan. If these overdue post-petition direct payments, plus the post-petition direct installment due in May 2002, are not received by Movant's counsel on or before May 31, 2002, the stay will be terminated on the ex parte application of the movant (if supported by a sufficient declaration establishing a default of the order). Upon service of the order on the debtor, debtor's counsel, and the trustee, the movant is authorized to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

In the event Debtors cure the existing default as directed above but again fail to timely pay a post-petition direct payment of principal and interest to Movant, this motion may be restored to calendar one time on as little as 10 days' notice, plus an additional 3 days of notice if service is by mail, to Debtors, Debtors' attorney, and the Trustee. The notice of the hearing shall be accompanied by an updated declaration supporting relief containing the evidence required by Local Rule 4001-1, Part II(b)(7). Any opposition to the motion shall be filed two court days prior to the hearing. This provision shall be effective through May 2003.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d). The loan documentation contains an attorney's fee provision and Movant is an over-secured

creditor. Fees and costs of $675 or, if less, the amount actually payable by Movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that Movant's proof of claim is amended and served upon the Trustee.

17. 02-22451-A-13J GEORGE/DAROLYN MAKER — HEARING - OBJECTION TO DEBTORS' MOTION TO VALUE COLLATERAL BY UNITED AIRLINES EMPLOYEES CREDIT UNION 5-2-02 [13]

Tentative Ruling: The objection is sustained in part. While the debtor has indeed included a valuation motion with the plan, the court need not rule on that motion in order to confirm the plan. The objecting creditor's secured claim has been classified in Class 4. Class 4 claims are not modified by the plan. If the debtor wishes to modify the claim, the claim must be treated in Class 2. Further, the plan indicates that the claim is being paid by a third party. The court can think of no reason that a person of the debtor should be able to benefit from a reduction of the claim via 11 U.S.C. § 506(a). Thus, whether the objecting creditor's claim is more or less than the value of its collateral is irrelevant. Its proof of claim must be paid in full and the plan cannot modify its claim. Therefore, the motion to value the collateral of the objecting creditor is denied without prejudice, but not for the reasons urged by the creditor.

18. 02-22152-A-13J JPJ #1 — ENRIQUE CASTELLANOS-ALVAREZ — HEARING - OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE 4-25-02 [10]

Tentative Ruling: The objection is sustained. The debtor has failed to produce copies of insurance policies to the trustee. This is a violation of the debtor's duties to cooperate with the trustee and to provide documents to the trustee. 11 U.S.C. § 521(3) & (4). The attempt to confirm a plan while withholding relevant information affecting the debtor's ability to reorganize and adequately protect his finances and the collateral of creditors is bad faith. 11 U.S.C. § 1325(a)(5).

19. 01-33161-A-13J MB #1 — KENNETH/ALMA REYNOLDS — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 5-2-02 [20] PART II
UNION PLANTERS MORTGAGE, INC., VS.

Tentative Ruling: Movant seeks relief from stay with respect to Debtors' real property, located at 18850 Oak Knoll Avenue in Lockeford, California. Movant is secured by a deed of trust encumbering the property. Debtors' plan requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtors have not made approximately two (2) post-petition payments (February 2002 through March 2002) to Movant, for a total of $597.08, excluding

attorney's fees and costs. Debtors oppose, stating that: (1) they have made five (5) post-petition payments to Movant; and (2) they are current through April 28, 2002.

Even if the court assumes that Debtors have made five (5) post-petition payments to Movant, Debtors are still delinquent for the April 2002 installment. See Movant's Exhibit 5. Debtors are current with their payments to Movant only through March 28, 2002. Accordingly, the motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d). The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of $675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid.

20. 01-33161-A-13J KENNETH/ALMA REYNOLDS
MB #2
UNION PLANTERS MORTGAGE, INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
5-2-02 [24]
PART II

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay two monthly post-petition installments. This is cause to terminate the automatic stay. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

21. 01-31466-A-13J ELLA MAY WALTER
M&B #1
ALLIANCE MORTGAGE COMPANY, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
5-6-02 [17]
PART II

Tentative Ruling: Movant seeks relief from stay with respect to Debtor's real property, located at 1483 East 1st Avenue in Chico, California. Movant is secured by a deed of trust encumbering the property. Debtor's plan requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtor has not made approximately five (5) post-petition payments (December 2001 through April 2002) to Movant, for a total of $4,263.31, excluding attorney's fees and costs. Debtor opposes, stating that she has paid the December 2001 through February 2002 installments. Debtor asserts that she will cure the remaining delinquency within 10 days after the hearing on the motion.

On the condition that Debtor produces evidence of the December 2001 through February 2002 payments at the hearing, the court will provide Debtor with ten (10) days after the hearing to cure the remaining delinquency. Accordingly, the motion is granted in part pursuant to 11 U.S.C. § 362(d)(1). Debtor has undisputedly not paid approximately two (2) post-petition direct payments required by the plan. If these overdue post-petition direct payments, plus the post-petition direct installments due in May and June 2002, are not received by Movant's counsel on or before June 7, 2002, the stay is terminated without the necessity of further motion or order. In that event, after giving notice of the stay's termination to Debtor, Debtor's counsel, and the Trustee, Movant is authorized to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

In the event Debtor cures the existing default as directed above but again fails to timely pay a post-petition direct payment of principal and interest to Movant, this motion may be restored to calendar on as little as 10 days' notice, plus an additional 3 days of notice if service is by mail, to Debtor, Debtor's attorney, and the Trustee. The notice of the hearing shall be accompanied by an updated declaration supporting relief containing the evidence required by Local Rule 4001-1, Part II(b)(7). Any opposition to the motion shall be filed two court days prior to the hearing.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d). The loan documentation contains an attorney's fee provision and Movant is an over-secured creditor. Fees and costs of $675 or, if less, the amount actually payable by Movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that Movant's proof of claim is amended and served upon the Trustee.

22. 01-34668-A-13J SAMUEL/JESSICA LOYA — HEARING - MOTION FOR HEARING ON CONFIRMATION OF DEBTORS' FIRST AMENDED CHAPTER 13 PLAN 4-25-02 [18]
PFF #1

Tentative Ruling: The motion is denied and the objection is sustained. The debtor proposes to make no plan payments for a five-month period. During this period, the debtor will have disposable income. The failure to use that income to make plan payments, given the objection of the trustee, violates 11 U.S.C. § 1325(b). Second, the proposed plan will take 72 months to be completed which exceeds the maximum plan term of 60 months. The plan does not comply with 11 U.S.C. § 1322(d).

23. 01-31471-A-13J ANGELA MARIE POWERS — HEARING - MOTION TO WITHDRAW AS ATTORNEY OF RECORD 5-1-02 [54]
SAC #2

Tentative Ruling: The motion to withdraw as counsel is granted. The debtor has failed to cooperate and communicate with counsel regarding this case. This is cause to withdraw. Counsel shall indicate in the order the debtor's address for purposes of future service of pleadings, return to the debtor all of his property, and provide to the debtor the original or a copy of his file.

24. 01-30479-A-13J ROGER M. DELGADO, SR. — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 5-9-02 [23] PART II
SJM #1
WASHINGTON MUTUAL BANK, VS.

Tentative Ruling: Movant seeks relief from stay with respect to Debtor's real property, located at 1483 East 1st Avenue in Chico, California. Movant is secured by a deed of trust encumbering the property. Debtor's plan requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtor has not made approximately five (5) post-petition payments (December 2001 through April 2002) to Movant, for a total of $4,263.31, excluding attorney's fees and costs. Debtor opposes, stating that he has paid the December 2001 through February 2002 installments. Debtor asserts that he will cure the remaining delinquency within 10 days after the hearing on the motion.

On the condition that Debtor produces evidence of the December 2001 through February 2002 payments at the hearing, the court will provide Debtor with the ten (10) days after the hearing to cure the remaining delinquency. Accordingly, the motion is granted in part pursuant to 11 U.S.C. § 362(d)(1). Debtor has undisputedly not paid approximately two (2) post-petition direct payments required by the plan. If these overdue post-petition direct payments, plus the post-petition direct installments due in May and June 2002, are not received by Movant's counsel on or before June 7, 2002, the stay is terminated without the

necessity of further motion or order. In that event, after giving notice of the stay's termination to Debtor, Debtor's counsel, and the Trustee, Movant is authorized to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

In the event Debtor cures the existing default as directed above but again fails to timely pay a post-petition direct payment of principal and interest to Movant, this motion may be restored to calendar on as little as 10 days' notice, plus an additional 3 days of notice if service is by mail, to Debtor, Debtor's attorney, and the Trustee. The notice of the hearing shall be accompanied by an updated declaration supporting relief containing the evidence required by Local Rule 4001-1, Part II(b)(7). Any opposition to the motion shall be filed two court days prior to the hearing.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d). The loan documentation contains an attorney's fee provision and Movant is an over-secured creditor. Fees and costs of $675 or, if less, the amount actually payable by Movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that Movant's proof of claim is amended and served upon the Trustee.

25. 01-24183-A-13J PATRICIA DENISE GERMANY
AC #1
CHASE MANHATTAN MORT. CORP., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC ETC
4-23-02 [24]
PART II

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay eleven monthly post-petition installments. This is cause to terminate the automatic stay. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

26. 00-28884-A-13J STEVEN/ERICA BALL
WG #10

HEARING - MOTION TO WITHDRAW AS ATTORNEYS FOR DEBTORS AND FOR APPROVAL OF FEES ($1,086.35 FEES)
5-6-02 [166]

Tentative Ruling: The motion is granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. The compensation is to be paid through the plan in a manner consistent with the plan and the Chapter

13 Fee Guidelines, if applicable.

The motion to withdraw as counsel is also granted. The debtor has failed to cooperate and communicate with counsel regarding this case. This is cause to withdraw. Counsel shall indicate in the order the debtor's address for purposes of future service of pleadings, return to the debtor all of his property, and provide to the debtor the original or a copy of his file.

27. 98-21985-A-13J MICHAEL/CANDACE TODD
AH #1
U.S. BANK, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
4-30-02 [133]
PART II

Tentative Ruling: Movant seeks relief from stay with respect to Debtors' real property, located at 1125 Willow Lane in Fairfield, California. Movant is secured by a second deed of trust encumbering the property. Debtors' plan, which identifies Movant as City Mortgage, requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtors have not made approximately forty-four (44) post-petition payments (August 1998 through March 2002) to Movant, for a total of $13,880.80, excluding attorney's fees. Debtors oppose, stating that they erroneously "believed the second mortgage due and owing to Movant was included in their Chapter 13 plan to be paid through the plan." Debtors are requesting 120 days to refinance their second mortgage.

As reflected in Movant's accounting, Debtors have made five (5) direct post-petition payments to Movant. Debtors' latest payment to Movant was in March of 2002. If Debtors believed that their payments to Movant were included in their plan payments, why did they make five (5) direct post-petition payments to Movant? The court cannot conclude that Debtors "believed" the payments to Movant were included in their plan payments to the Trustee, while they made five (5) direct post-petition payments to Movant. Debtors' failure to make direct post-petition payments to Movant, as prescribed by their Chapter 13 plan, is cause for the granting of relief from stay. Accordingly, the motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d). Because the loan documentation provided by Movant contains no attorney's fee provision, the court awards no fees and costs.

28. 01-21888-A-13J OLIN STEPHEN GORDON
DKC #4

CONT. HEARING - MOTION TO CONFIRM AMENDED PLAN
2-8-02 [45]

Tentative Ruling: The motion to confirm the chapter 13 plan is denied and the trustee's objection is sustained. First, the debtor is

retaining the collateral of the FTB and Solano County. However, the plan does not provide a treatment for these creditors' secured claims that is either acceptable to each creditor or which will result in each claim being paid in full with a market rate of interest. The plan does not comply with 11 U.S.C. § 1325(a)(5)(A) or (B). Second, the plan's feasibility depends on the ability of the debtor to sell real property. Pending a sale, the debtor will make token plan payments of $100.00 a month. The court has no evidence regarding the specifics of any proposed sale. Without this evidence, the court cannot conclude that the plan is feasible. Cf. In re Newton, 161 B.R. 207 (Bankr. D. Minn. 1993).

Quite frankly, the court is not sure that it understands Mr. MacPherson's objection. The gist of it appears to be that this creditor obtained a judgment against the former owner of certain property. A judgment lien encumbers that property. After it attached, the debtor acquired title to the property subject to the judgment lien. Therefore, the debtor must pay the judgment if he wishes to keep the property or sell it for his own benefit. If the debtor attempted to pay the judgment, two problems appear to exist. First, no plan would be feasible because the debtor would be required to make a lump sum payment in excess of $1,000,000. There is no evidence of an ability to make such a payment. Second, with the other secured claims filed, the debtor is not eligible for chapter 13 relief. The debtor has secured claims in excess of $871,550.00. 11 U.S.C. § 109(e).

29. 01-21888-A-13J OLIN STEPHEN GORDON — CONT. HEARING - OBJECTION TO CONFIRMATION OF PLAN BY DONALD W. MACPHERSON 10-31-01 [36]
DWM #1

Tentative Ruling: See ruling on Motion Control No. DKC #4. The court incorporates that ruling as its ruling in this matter.

30. 99-35891-A-13J LORRAINE S. GIBSON — CONT. HEARING - MOTION TO CONFIRM MODIFIED PLAN 9-21-01 [75]
DKC #5

Tentative Ruling: The motion to modify the confirmed plan is denied and the objection is sustained. Taking into account the stream of payments promised by the plan and the amount of claims to be paid, the plan will not be completed within 60 months as required by 11 U.S.C. § 1322(d). It will take 102 months to complete the plan.

31. 99-35891-A-13J LORRAINE S. GIBSON — CONT. HEARING - OBJECTION TO CLAIM OF DAVID BETCHEL 9-21-01 [78]
DKC #6

Tentative Ruling: The objection is overruled without prejudice. The plan provided that a dispute regarding this claim would be resolved in state court. The objection acknowledges that a trial is scheduled. When the state court has issued a final order, the objection can be

renewed if there is reason to renew it.

32.	01-20094-A-13J SERVANDO SOTO ASW #1 CITIFINANCIAL MORT. CO., VS.	HEARING - MOTION TO ANNUL AUTOMATIC STAY 4-25-02 [49] PART II

Tentative Ruling: Movant seeks relief from stay with respect to Debtor's real property, located at 6 Mill Stream Court in Sacramento, California. Movant is secured by a deed of trust encumbering the property. Debtor's plan does not provide for payments to Movant because Debtor purchased the subject property post-petition, without court approval. Movant seeks relief from stay on the basis that Debtor has not made 14 post-petition mortgage payments to Movant. Debtor opposes, arguing that Movant has refused to send him billing statements. Debtor asserts that he is able to begin making the mortgage payments to Movant as of June 1, 2002. Debtor is prepared to cure the post-petition delinquency through his plan.

By purchasing the subject property post-petition and without court approval, Debtor breached the terms of his Chapter 13 plan. Chapter 13 Plan, Section III(C)(b). Moreover, since Debtor also owns the real property located at 4541 Green Holme Drive, #3, the subject property is not necessary for Debtor's reorganization. Lastly, even if the fair market value of the property is $150,000, as Debtor claims, Debtor still has no equity in the property; according to Movant, the liens against the property total $150,119.02. Consequently, the court would not have approved Debtor's purchase of the property, even if he had requested court approval. Based on the foregoing, the court concludes that cause for the granting of relief from stay exists and Debtor has not equity in the property. Accordingly, the motion is granted pursuant to 11 U.S.C. § 362(d)(1)&(2) to permit Movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d). Because the loan documentation provided by Movant contains no attorney's fee provision, the court awards no fees and costs.

THE FINAL RULINGS BEGIN HERE

33. 00-21201-A-13J RICHARD G. TERRY AND ROSEMARY K. WALSH
EGS #1
RESIDENTIAL FUNDING CORP., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
5-9-02 [54]
PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. Movant seeks relief from stay with respect to Debtors' real property, located at 3892 Ciarlo Lane in Vacaville, California. Movant is secured by a second deed of trust encumbering the property. Debtors' plan, which identifies Movant as Matrix Financial, requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtors have not made approximately four (4) post-petition payments (January 2002 through April 2002) to Movant, for a total of $9,947.78, excluding attorney's fees and costs. Debtors oppose, stating that they will cure the delinquency by filing a modified Chapter 13 plan. Debtors represent that they have filed a motion to modify their plan, scheduled for hearing on June 25, 2002, as well as amended Schedules I and J to reflect their increase in income.

Debtors have demonstrated that the court is likely to confirm their modified plan. Accordingly, the court continues the instant motion to June 25, 2002, to hear it along with Debtors' motion to modify.

34. 00-26801-A-13J CHRISTOPHER J. SPANGER
AC #1
CHASE MANHATTAN MORT. CORP., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
4-30-02 [43]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay 12 monthly post-petition installments. This is cause to terminate the automatic stay. The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of $675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P.

4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

35. 02-24601-A-13J TIMOTHY/CONNIE TYLER — HEARING - OBJECTION TO DEBTORS' CHAPTER 13 PLAN BY GMAC
SW #1 — 5-8-02 [8]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The debtors are retaining the collateral of GMAC. However, the plan does not provide a treatment for this creditor's secured claim that is either acceptable to the creditor or which will result in payment in full with a market rate of interest. The plan does not comply with 11 U.S.C. § 1325(a)(5)(A) or (B).

The debtor has 15 days to file an amended or modified plan and a motion to confirm it. Once filed, the debtor has 30 days to obtain confirmation. If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

36. 02-20803-A-13J DARRELL/BEVERLY SCHMIDT — HEARING - VERIFIED MOTION TO CONFIRM SECOND AMENDED PLAN
MHK #1 — 4-26-02 [20]

Final Ruling: The movant or the objecting party has voluntarily dismissed the matter on calendar.

37. 98-32003-A-13J JOHN/CAROLYN WHITE — HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM OF AMERICAN HONDA FINANCE CORP.
JPJ #1 — 4-5-02 [15]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The last date to file a timely proof of claim was December 16, 1998. The proof of claim was filed on June 28, 2000. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

38. 01-32207-A-13J CHRISTINE GARY — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
MPD #1 — 5-7-02 [12]
LONG BEACH MORTGAGE CO., VS. — PART II

Final Ruling: The court finds that a hearing will not be helpful to

its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay two monthly post-petition installments. This is cause to terminate the automatic stay. The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of $675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

39. 02-22508-A-13J JAMES/MONICA MCMULLEN
PSP #1

HEARING - OBJECTION TO PROPOSED CHAPTER 13 PLAN AND CONFIRMATION THEREOF BY WESTERN SUNRISE
5-1-02 [17]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The objection is sustained. The plan is built on the assumption that the arrearage claim is $11,000.00. However, the creditor has filed a claim for $21,146.74. At this level, the plan is not feasible.

Despite sustaining the objection the court will nonetheless confirm the plan if it is further amended as indicated in the response to the objection. The debtor has 15 days from the hearing to lodge with the trustee an order confirming the plan which incorporates these additional modifications.

40. 00-26710-A-13J ROD/DEBORAH FERRANDINO
DEF #1

HEARING - MOTION FOR CONFIRMATION OF FIRST MODIFIED CHAPTER 13 PLAN
4-22-02 [99]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion to modify the confirmed plan is denied and the objection is sustained. The proposed plan does not comply with 11 U.S.C. § 1325(a)(4). Taking into account the scheduled value of assets, the amount of secured claims, the scheduled amount of the unsecured claims, and the debtor's exemptions, the plan must pay a dividend of 6.2% to unsecured creditors in order to match what they would receive in a chapter 7 liquidation as of the effective date of the plan. The plan promises no dividend.

Despite sustaining the objection the court will nonetheless confirm the plan if it is further amended to provide for the 6.2% dividend and the necessary adjustment is made in the plan payment to account for the increased dividend. The debtor has 15 days from the hearing to lodge with the trustee an order confirming the plan which incorporates these additional modifications.

41. 00-33010-A-13J CARL/BETTY ECCARIUS
DCM #1
FIRST INTERSTATE BANK OF CALIF., VS.
OF CALIFORNIA, VS.

HEARING - DEBTORS' MOTION FOR RECONSIDERATION OF THE ORDER SUSTAINING MOVANTS' MOTION FOR RELIEF FROM AUTOMATIC STAY
5-17-02 [42]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied. First, this motion has been set on 11 days of notice. Local Bankruptcy Rule 9014-1, Part II requires 22 days of notice. There is no record of an application to shorten this time.

Second, there is no evidence to support the motion. That is, there are no declarations or affidavits establishing any of the factual assertions in the motion or authenticating any of the documentary evidence appended to it.

42. 01-30710-A-13J LINDA A. HINES
TJS #1
HOUSEHOLD AUTO. FINANCE, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
4-26-02 [29]
PART II

Final Ruling: The parties have resolved this matter by stipulation. The parties shall submit a written stipulation together with an appropriate order.

43. 01-34010-A-13J ROBERTA J. BARTH
WSS #3

HEARING - MOTION FOR CONFIRMATION OF THIRD AMENDED PLAN AND TO VALUE COLLATERAL OF AL SEASTRAND
5-9-02 [66]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is dismissed without prejudice because there is a service defect. Fed.R.Bankr.P. 2002 requires that the trustee and creditors receive 25 days of notice of the time to file objections to a proposed plan. Local Bankruptcy Rule 9014-1, Part II(b)(1) provides: "*Unless a different time is required by the Federal Rules of Bankruptcy Procedure or these Rules, the hearing shall be set for not less than twenty-two (22) calendar days from date of filing and service.*" The proof of service shows that the service was accomplished 20 days before the

hearing. There is no record of an application requesting permission to shorten the amount of notice.

44. 01-32711-A-13J ANNETTTE F. MARTINEZ
ASW #1
FIRST NATIONWIDE MORT. CORP., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
5-6-02 [22]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments accruing on the movant's first deed of trust be paid directly to the movant. The debtor has failed to pay three monthly post-petition installments. This is cause to terminate the automatic stay. The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of $675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

45. 01-29212-A-13J MANUEL ZAVALA

HEARING - MOTION TO APPROVE ATTORNEY'S FEES ($1,500.00)
4-23-02 [49]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is dismissed without prejudice. The notice of the motion fails to state the location of the hearing. Local Bankruptcy Rule 9014-1, Part II(b) provides: "*Any motion, together with any accompanying papers and notice of hearing with the date, time,* ***place*** *and department filled in, shall be filed with the Clerk by the moving party.*" While the court is sure that the trustee knows that the hearing will take place in the courthouse and its location, the court will not make the same assumption about the debtor and other parties in interest. When the motion is refiled, the court suggests that the motion be accompanied by contemporaneous time records or some other evidence of the work done and the time expended, and an explanation of the applicant's prior failure to disclose the retainer mentioned in this motion.

46. 98-23313-A-13J JUDY ANN VIRGA
TJP #1
CONSECO FINANCE SERVICING CORP., VS.

CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
4-1-02 [41]
PART II

Final Ruling: This case converted to chapter 7 on May 17. The motion has not been served on the chapter 7 trustee. Therefore, the court continues the hearing to June 17, 2002 at 9:00 a.m. Notice of continued hearing shall be given by movant no later than May 31, 2002. That notice shall inform parties in interest that written opposition must be filed no later than June 12, 2002.

If this continuance causes conflicts with the time constraints of 11 U.S.C. § 362(e) and if the movant will not waive those time constraints, the movant shall lodge an order denying the motion without prejudice.

47. 01-29215-A-13J DENNIS/KIMBERLY HORNER
JPJ #2

HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM OF MAX RECOVERY, INC.
4-12-02 [26]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The trustee complains that the claim is duplicative of a later filed proof of claim filed by a different creditor that is apparently the successor of the claimant. The later proof of claim by the successor does not indicate that it is amending or replacing the earlier proof of claim. However, from the information in the proofs of claim it is clear that they are duplicative. Therefore, the earlier proof of claim is disallowed and the latest proof of claim by the successor is allowed.

48. 98-39717-A-13J DAVID/ANDREA MATLOCK
JPJ #3

HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM OF RESURGENT CAPITAL SERVICES
4-5-02 [54]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The last date to file a timely proof of claim was May 12, 1999. The proof of claim was filed on May 17, 1999. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

49. 02-23819-A-13J PATRICK JOSEPH WEST — HEARING - MOTION FOR APPROVAL OF ATTORNEY'S FEES AND COSTS ($2,222.50) 5-6-02 [11]
WG #1

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. The compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

50. 99-29619-A-13J FORREST BARGEWELL — HEARING - MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION 4-30-02 [58]
SDB #5

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

51. 00-20120-A-13J ANTHONY/ROBBIE JACKSON — HEARING - MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION 4-30-02 [29]
SDB #1

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

52. 01-25621-A-13J GREG/ERMA CULBERTSON — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 5-8-02 [38] PART II
MB #1
CHARTER ONE MORT. CORP., VS.

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The

plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay five post-petition installments. This is cause to terminate the automatic stay. The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of $675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

53. 01-34122-A-13J THOMAS/SHERRI CURNOW
JPJ #3

HEARING - OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
4-15-02 [26]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The objections are sustained. First, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling $2,295.12. The plan does not comply with 11 U.S.C. § 1325(a)(6). Second, taking into account the stream of payments promised by the plan and the amount of claims to be paid, the plan will not be completed within 60 months as required by 11 U.S.C. § 1322(d). It will take 83 months to complete the plan. Third, the debtor is retaining the collateral of Union Bank. However, the plan does not provide a treatment for this creditor's secured claim that is either acceptable to the creditor or which will result in payment in full with a market rate of interest. The plan does not comply with 11 U.S.C. § 1325(a)(5)(A) or (B).

54. 99-36422-A-13J STANLEY/DENISE ECHOLS
ASW #2
FIRST NATIONAL BANK OF CHICAGO
AS TRUSTEE, VS.

CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
4-1-02 [57]
PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied. After reviewing the supplemental declarations, the court concludes that the debtor cured the default alleged in the motion.

Because the plan was in default when the motion was filed, because the loan documentation contains an attorney's fee provision, and because the movant is an over-secured creditor, fees and costs of $675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that Movant's proof of claim is amended and served upon the Trustee.

55. 00-31523-A-13J DURVILLE PATTON — HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM
JPJ #2 — 4-5-02 [26]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The proof of claim fails to state the name or address of the creditor. Accordingly, the claim does not contain the minimal information required by Fed.R.Bankr.P. 3001(a) and the Official Claim Form. It is disallowed.

56. 01-29323-A-13J STEVEN/VICTORIA SHURRUM — HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM OF PROFESSIONAL RECOVERY SYSTEMS
JPJ #1 — 4-12-02 [22]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The last date to file a timely proof of claim was December 12, 2001. The proof of claim was filed on January 14, 2002. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

57. 02-22323-A-13J REBUYON R. RONALD — HEARING - OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
JPJ #1 — 4-18-02 [8]

Final Ruling: The debtor has failed to respond to the matter on calendar. Because the debtor has come forward with no opposition or response, this matter is suitable for disposition without oral argument. The objection is sustained. The debtor is repaying by a payroll deduction a loan from a retirement plan.

A plan which permits a debtor to repay an obligation secured by a non-income producing or an exempt asset not necessary to the plan sacrifices disposable income which could go to unsecured creditors in order to salvage an asset which will produce nothing for the unsecured creditors. Nor does such an asset provide for the debtor's present support. "Although investments may be financially prudent, they certainly are not necessary expenses for the support of the debtors or their dependents. [Footnote omitted.] Investments of this nature are therefore made with disposable income; disposable income is not what is left after they are made." In re Lindsey, 122 B.R. 157, 158 (Bankr.

M.D. Fla. 1991). See also, In re Festner, 54 B.R. 532, 533 (Bankr. E.D. N.C. 1985); N.Y. City Emp. Retirement System v. Villarie (In re Villarie), 648 F.2d 810, 812 (2d Cir. 1981); In re Jones, 138 B.R. 536 (Bankr. S.D. 1991). Here the debtors wish to repay a loan secured by a 401k plan even though general unsecured claims are not being paid in full. The court recognizes that the failure to repay this loan will cause adverse tax consequences to the debtors. Any tax liabilities, however, may be paid through a Chapter 13 plan or outside of the plan. 11 U.S.C. section 1305(a).

Although the Ninth Circuit has not ruled on this issue, the Sixth and Third Circuits have held that a debtor cannot repay pension or retirement loans while in a chapter 13. Harshbarger v. Pees (In re Harshbarger), 66 F.3d 775, 777 (6th Cir. 1995); Tierney v. Dehart (In re Tierney), 195 F.3d 177 (3d Cir. 1999). In Tierney, the court held:

"[R]epayment of amounts withdrawn from retirement accounts is not reasonably necessary for a debtor's maintenance or support, requiring that payments be made, if at all, only after satisfaction of all unsecured debts. [Citations omitted.] . . . If the Debtors do not make the proposed payments, the retirement systems will deduct the balance owed from their retirement accounts. The payments, even if classified as debt payments, therefore, will increase their retirement benefits rather than repay the retirement systems or ensure the viability of either pension system. In effect, the payments are contributions to the Debtors' retirement accounts. Voluntary contributions to retirement plans, however, are not reasonably necessary for a debtor's maintenance or support and must be made from disposable income. [Citations omitted.] As one bankruptcy court explained in refusing to confirm a plan that proposed to make mortgage payments on non-residential property rather than satisfy unsecured creditors, "[a]lthough investments may be financially prudent, they certainly are not necessary expenses for the support of the debtors or their dependents. Investments of this nature are therefore made with disposable income; disposable income is not what is left after they are made. In re Lindsey, 122 B.R. 157, 158 (Bankr. M.D. Fla. 1991). Debtors' proposed payments, regardless of their financial prudence, must be understood as being made out of "disposable income" under the terms of their proposed plans."

In re Tierney, 195 F.3d at 180-181. The court agrees with this holding. Therefore, the plan, which pays a 30% dividend on unsecured claims, does not comply with 11 U.S.C. § 1325(b).

The debtor has 15 days from service of an order sustaining the objection to file an amended or modified plan and a motion to confirm it. Once filed, the debtor has 30 days to obtain confirmation. If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

58. 99-23225-A-13J CAROYL R. INCH — HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM OF WEINSTEIN, FISCHER, ET AL. 4-12-02 [15]
JPJ #1

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The last date to file a timely proof of claim was July 21, 1999. The proof of claim was filed on October 18, 1999. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

59. 01-24728-A-13J TRACY/TERRY STEWART — HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM OF LAKE COUNTY TAX COLLECTOR 4-5-02 [50]
JPJ #3

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The last date to file a timely proof of claim was October 16, 2001. The proof of claim was filed on March 4, 2002. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

60. 01-29531-A-13J THOMAS/CONSTANCE FROST — HEARING - MOTION TO CONFIRM FIRST AMENDED CHAPTER 13 PLAN 4-24-02 [42]
EJS #2

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

61. 01-30931-A-13J EDWARD/ALETA RICHARDSON
RLE #1
TOYOTA LEASE TRUST, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
5-6-02 [38]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle leased to the debtor, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. Cause exists for this relief because the debtor has defaulted in making post-petition lease payments. The plan assumes the lease and requires the debtor to make lease payments directly to the movant. This is cause to terminate the stay. No fees and costs are awarded. The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's leased vehicle is being used by the debtor without compensation and is depreciating in value.

62. 99-21033-A-13J DONALD/STACY MOKMA
JPJ #2

HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM OF NATIONAL CAPITAL MANAGEMENT
4-5-02 [28]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The last date to file a timely proof of claim was January 15, 1999. The proof of claim was filed on January 17, 1999. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

63. 01-30134-A-13J JAMES/SHAWNA STEVENSON
JPJ #1

HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM OF WELTMAN, WEINBERG & REIS
4-12-02 [33]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The last date to file a timely proof of claim was January 2, 2002. The proof of claim was filed on January 24, 2002.

Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

64. 02-20334-A-13J VINCENT/MARIA CASTELLE — HEARING - MOTION FOR CONFIRMATION OF AMENDED CHAPTER 13 PLAN AND MOTION TO VALUE COLLATERAL OF USAA FEDERAL CREDIT UNION 4-23-02 [16]
DM #2

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

The motion also includes a valuation concerning the collateral of USAA F.C.U. (the respondent). It has not opposed the motion and its default is entered. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $6,250.00 on the date the petition was filed. That date is the effective date of the plan. $6,250.00 of its claim is an allowed secured claim. When paid $6,250.00, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

65. 98-35836-A-13J MARLOW SCHOCK — HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM OF GOLDEN BEAR INSURANCE CO. 4-5-02 [116]
JPJ #6

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The last date to file a timely proof of claim was March 2, 1999. The proof of claim was filed on September 14, 1999. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

66. 00-27938-A-13J BEATRICE L. SHERRITT
DRW #1
WESTERN UNITED LIFE ASSUR. CO., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
5-8-02 [40]
PART II

Final Ruling: The movant or the objecting party has voluntarily dismissed the matter on calendar.

67. 02-23039-A-13J JOHN R. JENNINGS
M&B #1

HEARING - OBJECTION TO PROPOSED CHAPTER 13 PLAN AND CONFIRMATION THEREOF BY HOMESIDE LENDING, INC.
5-9-02 [16]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The objection is sustained in part.

The objecting creditor holds an interest in the rents generated by the real property securing its claim. The rents are the cash collateral of the creditor. Cash collateral may not be used without the consent of the creditor or pursuant to a court order. 11 U.S.C. § 363(c)(2). To obtain a court order, the debtor must demonstrate that the creditor's interest in the cash collateral will be adequately protected. 11 U.S.C. § 361.

However, the "rent" in question is being paid by an adult child who resides in the property with the debtor. The court does not consider this rent. It is a contribution to a household. The daughter is not contractually obligated to make the contribution.

If it can be considered rent, the debtor is effectively passing it through to the creditor since he is paying directly to the creditor all post-petition contract installments. These installments exceed the $350.00 contribution from the daughter.

Further, the attempt by the creditor to argue that the rents were "absolutely assigned" to it and therefore the debtor cannot use those rents, is outdated given the enactment of Cal. Civil Code § 2938. The distinction between absolute assignments, assignments for additional security, or assignments absolute on default have been abolished. The language used will merely create an assignment of rents as additional security for the loan. See CEB, California Mortgage and Deed of Trust Practice, § 6.25 (3d ed.).

The objection based on the argument that the debtor cannot use the "cash collateral" is overruled.

The argument that this case and the proposed plan have been filed in bad faith is overruled. This objection is based on the fact that the debtor's former spouse filed an earlier petition and the creditor obtained relief from the automatic stay in that case. However, the

evidence does not indicate that the former spouses are colluding and are taking turns filing petitions. Rather, it appears that the debtor was recently awarded the former family residence and that after the award, he filed this case. This is not bad faith.

However, the objection to the feasibility of the plan is sustained. The plan is not feasible whether or not the debtor has the ability to make the monthly plan payment. The stream of payments will not pay the dividends promised by the plan over the present term of the plan. The plan does not comply with 11 U.S.C. § 1325(a)(6).

The debtor has 15 days to file an amended or modified plan and a motion to confirm it. Once filed, the debtor has 30 days to obtain confirmation. If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

68. 01-29040-A-13J L. C./LEA UPTON
WSS #4

HEARING - MOTION TO VALUE COLLATERAL OF BUTTE COUNTY FAMILY TRUST
5-9-02 [33]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $150,000.00 on the date the petition was filed. That date is the effective date of the plan. On the effective date, the collateral was encumbered by two senior liens securing claims exceeding $150,000.00. Therefore, the respondent's collateral has no value and pursuant to section 506(a) its secured claim is disallowed.

69. 02-22341-A-13J JAMES W. ARNOLD
JPJ #1

HEARING - TRUSTEE'S MOTION TO RE-CONVERT CASE TO A CHAPTER 7 PROCEEDING OR IN THE ALTERNATIVE DISMISS CASE
5-6-02 [13]

Final Ruling: The debtor has failed to respond to the matter on calendar. Because the debtor has come forward with no opposition or response, this matter is suitable for disposition without oral argument. The motion is granted and the case is converted to chapter 7.

This case was filed under chapter 7 on March 1, 2002. On March 18, 2002, the debtor converted the case to one under chapter 13. Pursuant to Fed.R.Bankr.P. 3015(b), the debtor was required to file a chapter 13 plan not later than April 2. It has not been filed and no excuse has been offered for this failure.

Due to the failure to timely prosecute the chapter 13 petition and the failure to propose and confirm a plan, the motion is granted and the

case converted back to chapter 7.

70. 02-21943-A-13J JAMES/SANDRA SMOLA — HEARING - MOTION TO APPROVE FIRST AMENDED PLAN 5-6-02 [13]
AMH #1

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

71. 00-24144-A-13J SHIRLEY PELTIER — HEARING - MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION 4-26-02 [31]
RD #1

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

72. 02-22244-A-13J WILLIAM/SHERRY SILLS — HEARING - MOTION TO VALUE COLLATERAL OF UNION BANK OF CA 4-25-02 [13]
SS #1

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied without prejudice. The motion simply incorporates the form valuation motion and declaration previously filed as part of the debtor's chapter 13 plan. However, the proof of service does not indicate that such motion and declaration were served with the notice of hearing.

The form valuation motion incorporated in the chapter 13 plan may be used only when the valuation is sought contemporaneously with confirmation of the plan. Whenever a valuation motion is set for hearing apart from confirmation, a self-contained, stand-alone valuation motion must be filed. That is, do not use the form motion included in the plan. To do so is confusing since the plan instructs creditors to object within 14 days of the conclusion of the first meeting and set the objection for hearing within 45 days after the conclusion of the first meeting. When a stand-alone valuation motion is filed, Local Bankruptcy Rule 9014-1 applies. Opposition is due five court days before the hearing on the motion.

This motion is an amalgam of both procedures. Consequently, it is not clear to the respondent what is required to oppose the motion. The debtor must begin again and file a motion which includes a motion, a declaration(s) supporting the motion, and a notice of hearing that complies with Local Bankruptcy Rule 9014-1.

73. 01-21145-A-13J JOSEPH/SHIRLEY JIMERSON
PL #2
HEARING - MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION
4-30-02 [125]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

The trustee's objection is overruled. The court construes the August 31, 2001 stipulation as reducing the claim of Schmidl/Webster to $234,629.07. While this could be clearer, the creditor clearly agreed to the confirmation of a plan and that the plan would provide for its claim in the reduced amount of $234,629.07. If this did not have the effect of reducing its claim, then the plan would violate 11 U.S.C. § 1325(a)(5) since the plan would not pay the secured claim in full.

74. 02-23845-A-13J DANIEL/DEBRA STAAT
SW #1
HEARING - OBJECTION TO CONFIRMATION OF PLAN BY GMAC
4-26-02 [13]

Final Ruling: The debtor has failed to respond to the matter on calendar. Because the debtor has come forward with no opposition or response, this matter is suitable for disposition without oral argument. The objection is sustained in part. At a hearing on May 14, 2002, the court ruled that it would terminate the automatic stay to permit the objecting creditor to dispose of its previously repossessed collateral, a vehicle. In so ruling, the court found that the vehicle was not necessary to the debtor's reorganization and that the debtor had failed to insure the vehicle. Therefore, given this prior ruling, the court will not permit the debtor to attempt to reorganize this debt.

The debtor has 15 days to file an amended or modified plan and a motion to confirm it. Once filed, the debtor has 30 days to obtain confirmation. If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

75. 01-26746-A-13J STEVEN RUSSELL
OHP #1
COUNTRYWIDE HOME LOANS, INC., VS.

CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
4-9-02 [36]
PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied. The additional evidence filed by the debtor establishes that the default alleged in the motion has been cured or substantially cured. There is no cause to terminate the stay.

76. 01-32147-A-13J MICHELANGELO/SHELLEY DESCHAVES
CRR #1

HEARING - MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION
5-3-02 [30]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

77. 00-31548-A-13J GABRIEL/JENNIFER REECE
PSP #1
CHASE MANHATTAN MORTGAGE CORP., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
5-2-02 [46]
PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. Movant seeks relief from stay with respect to Debtors' real property, located at 6224 Cavan Drive, #2 in Citrus Heights, California. Movant is secured by a deed of trust encumbering the property. Debtors' plan requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtors have not made approximately four (4) post-petition payments (January 2002 through April 2002) to Movant, for a total of $1,520.72. Debtors oppose stating that they will cure the default by the hearing date.

Accordingly, the motion is granted in part pursuant to 11 U.S.C. § 362(d)(1). Debtors have admittedly not paid approximately four (4) post-petition direct payments required by the plan. If these overdue post-petition direct payments, plus the May 2002 installment, are not received by Movant's counsel on or before May 31, 2002, the stay will be terminated on the ex parte application of the movant (if supported by a sufficient declaration establishing a default of the order). Upon service of the order on the debtor, debtor's counsel, and the trustee, the movant is authorized to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

In the event Debtors cure the existing default as directed above but again fail to timely pay a post-petition direct payment of principal and interest to Movant, this motion may be restored to calendar one time on as little as 10 days' notice, plus an additional 3 days of notice if service is by mail, to Debtors, Debtors' attorney, and the Trustee. The notice of the hearing shall be accompanied by an updated declaration supporting relief containing the evidence required by Local Rule 4001-1, Part II(b)(7). Any opposition to the motion shall be filed two court days prior to the hearing. This provision shall be effective through May 2003.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d). The loan documentation contains an attorney's fee provision and Movant is an over-secured creditor to the extent of $25.30. Fees and costs of $25.30 are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that Movant's proof of claim is amended and served upon the Trustee.

78. 00-29952-A-13J GILBERT/VICTORIA PROSSER
JLB #2
HEARING - DEBTORS' MOTION TO MODIFY AND CONFIRM SECOND AMENDED CHAPTER 13 PLAN AFTER CONFIRMATION
4-15-02 [45]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

79. 01-29152-A-13J KENNETH/MARGARET KEITH
PL #1
HEARING - MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION
4-30-02 [30]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

80. 02-20252-A-13J RICARDO/SHELLY BROWN
JLS #3
HEARING - DEBTORS' MOTION FOR CONFIRMATION OF FIRST AMENDED CHAPTER 13 PLAN
5-6-02 [39]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is

removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

81. 02-20252-A-13J RICARDO/SHELLY BROWN — HEARING - OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE 4-18-02 [34]
JPJ #1

Final Ruling: The matter on calendar is denied or overruled as moot – the debtor has proposed a first amended plan, apparently in response to the objection and no further objection has been filed to the first amended plan.

82. 99-34053-A-13J SIMON WHARTON — HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM OF INTERNAL REVENUE SERVICE 4-12-02 [60]
JPJ #3

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The last date to file a timely proof of claim was April 22, 2000. The proof of claim was filed on December 19, 2001. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

83. 01-30554-A-13J EDWIN/MARISOL CUXEVA — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 4-26-02 [27] PART II
KBR #1
HOMEQ SERVICING CORPORATION, VS.

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan, which identifies the movant as Alegis Group, requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay seven monthly post-petition installments. This plan default is cause to terminate the automatic stay. Because

the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent this statute remains applicable to bankruptcy proceedings.

84. 01-32154-A-13J JULIA A. JOHNSON
MET #1

HEARING - MOTION TO VALUE COLLATERAL OF AMERICAN GENERAL
4-30-02 [28]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $400 on the date the petition was filed. That date is the effective date of the plan. $400 of its claim is an allowed secured claim. When paid $400, and after completion of the plan, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

85. 01-32154-A-13J JULIA A. JOHNSON
MET #2

HEARING - MOTION TO VALUE COLLATERAL OF FIRESIDE THRIFT
4-30-02 [32]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $5,615 on the date the petition was filed. That date is the effective date of the plan. $5,615 of its claim is an allowed secured claim. When paid $5,615, and after completion of the plan, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

86. 01-32154-A-13J JULIA A. JOHNSON
MET #3

HEARING - MOTION TO VALUE COLLATERAL OF CITIFINANCIAL
4-30-02 [36]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is

granted. The respondent's collateral had a value of $500 on the date the petition was filed. That date is the effective date of the plan. $500 of its claim is an allowed secured claim. When paid $500, and after completion of the plan, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

87. 01-32154-A-13J JULIA A. JOHNSON — HEARING - MOTION TO VALUE COLLATERAL OF HEILIG MEYERS 4-30-02 [40]
MET #4

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $300 on the date the petition was filed. That date is the effective date of the plan. $300 of its claim is an allowed secured claim. When paid $300, and after completion of the plan, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

88. 01-32154-A-13J JULIA A. JOHNSON — HEARING - MOTION TO VALUE COLLATERAL OF MBNA AMERICA 4-30-02 [44]
MET #5

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $400 on the date the petition was filed. That date is the effective date of the plan. $400 of its claim is an allowed secured claim. When paid $400, and after completion of the plan, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

89. 01-32154-A-13J JULIA A. JOHNSON — HEARING - MOTION FOR CONFIRMATION OF FIRST AMENDED CHAPTER 13 PLAN 4-30-02 [48]
MET #6

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is

removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

90. 00-31055-A-13J SANDRA M. ESPINOSA — HEARING - MOTION TO CONFIRM SECOND MODIFIED CHAPTER 13 PLAN 5-7-02 [58]
WW #4

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted on condition that the debtor lodges with the trustee within 15 days of the hearing a proposed order confirming the modified plan as well as an order sustaining the objection to the secured claim of Conseco Financial. On this condition, the motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

91. 01-23555-A-13J THOMAS/ELOUISE KENNEDY — CONT. HEARING - OBJECTION TO CLAIM OF WASHINGTON MUTUAL 6-11-01 [24]
DM #1

Final Ruling: After this ruling was prepared, the parties continued the hearing to June 11, 2002 at 9:00 a.m. If nothing additional is filed prior to the continued hearing, the following is likely to be the tentative or final ruling. The objection is overruled. While the debtor asserts that the movant has not credited payments, the debtor has not presented a cohesive accounting that comes to a conclusion regarding the correct amount of the arrearage. The debtor has merely presented the court with a series of canceled checks. From this evidence, the court cannot determine whether these checks satisfied particular payments which the creditor maintains were not paid. Therefore, the court will set an evidentiary hearing in order to give both sides the opportunity to present detailed accountings of the payments and charges. This hearing will be a scheduling conference only.

92. 01-29055-A-13J DONALD/DEANNE THOMAS — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 4-26-02 [33] PART II
KBR #1
HOMEQ SERVICING CORP., VS.

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. Movant seeks relief from stay with respect to Debtors' real property, located at 7502 Fair Way Avenue in Fair Oaks, California. Movant is secured by a second deed of trust encumbering the property. Debtors' plan requires that the post-petition note installments be paid directly to

Movant. Allegedly, Debtors have not made approximately two (2) post-petition payments (March 2002 through April 2002) to Movant, for a total of $941.40, excluding attorney's fees and costs. Although Movant's accounting reflects only one installment delinquency, Debtors admit that they are two payments in default. Debtors oppose, nonetheless, stating that they have cured the delinquency.

Debtors have produced satisfactory evidence that they have cured or substantially cured the delinquency. Accordingly, the motion is denied without prejudice. Because the loan and the plan were in post-petition default when the motion was filed, fees and costs are awarded. The loan documentation contains an attorney's fee provision and Movant is an over-secured creditor. Fees and costs of $675 or, if less, the amount actually payable by Movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that Movant's proof of claim is amended and served upon the Trustee.

93. 01-31555-A-13J MARIANNE ESTES — HEARING - DEBTOR'S OBJECTION TO CLAIM OF CHASE MANHATTAN 4-11-02 [16]
GG #1

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. On the date of the petition, the debtor was current on the home mortgage referred to in the proof of claim. There were no pre-petition arrears. This element of the proof of claim is disallowed.

94. 00-24356-A-13J GERALD/ELIZABETH ALTIERI — HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM OF CALIFORNIA SERVICE BUREAU 4-5-02 [22]
JPJ #2

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The last date to file a timely proof of claim was August 16, 2000. The proof of claim was filed on December 13, 2000. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

95. 02-21057-A-13J KYU/EUN AN, VS. — HEARING - MOTION TO AVOID JUDICIAL LIEN 4-25-02 [18]
GG #1
PROVIDIAN NATIONAL BANK

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $175,000.00 as of the date of the petition. The unavoidable liens total $146,000.00. The debtor has an available exemption of $75,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

96. 02-21057-A-13J KYU/EUN AN — CONT. HEARING - OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE 3-15-02 [11]
JPJ #1

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The objection is overruled. The debtor has filed and the court has granted a motion avoiding the nonjudicial judgment lien of Providian. Therefore, the plan complies with 11 U.S.C. § 1325(a)(5).

97. 01-28359-A-13J TIMOTHY/RENEE FEATHERSTON — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 5-3-02 [108] PART II
KK #1
CONSECO FINANCE CORPORATION, VS.

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay nine monthly post-petition installments. This plan default is cause to terminate the automatic stay. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

98. 01-28359-A-13J TIMOTHY/RENEE — HEARING - MOTION FOR

KK #2 FEATHERSTON
CONSECO FINANCE CORPORATION, VS.

RELIEF FROM AUTOMATIC STAY
5-3-02 [112]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay nine monthly post-petition installments. This plan default is cause to terminate the automatic stay. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

99. 01-29359-A-13J ANABEL AVALOS
JPJ #1

HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM OF FORD MOTOR CREDIT COMPANY
4-12-02 [33]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The last date to file a timely proof of claim was December 12, 2001. The proof of claim was filed on January 29, 2002. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

100. 01-33359-A-13J JUANITA SCHEER
MWB #3

HEARING - MOTION FOR ORDER CONFIRMING SECOND AMENDED CHAPTER 13 PLAN
5-2-02 [38]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to

confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

101. 02-22959-A-13J BOYCE/JANET HURLBUT
MWB #1

HEARING - MOTION TO VALUE COLLATERAL OF TOYOTA MOTOR CORPORATION
4-17-02 [16]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied and the objection is sustained.

The plan includes a valuation motion. It is supported by a declaration of the debtor testifying that the subject vehicle has a value of $8,000. A debtor may testify regarding the value of property owned by the debtor. Fed.R.Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

Nothing in Rash v. Associates Commercial, 138 L.Ed.2d 148 (1997), compels the conclusion that retail value, or high blue book value, is replacement value. Indeed, it suggests the two are not equivalent. Id. at 160, n. 6 ("Whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property. We note, however, that replacement value, in this context, should not include certain items. For example, where the proper measure of the replacement value of a vehicle is its retail value, an adjustment to that value may be necessary: A creditor should not receive portions of the retail price, if any, that reflect the value of items the debtor does not receive when he retains his vehicle, items such as warranties, inventory storage, and reconditioning.").

However, the valuation urged by the debtor is substantially below the low or wholesale valuation given by the Kelley Blue Book. The discrepancy between the Blue Book valuation is so significant that it calls into question the credibility and accuracy of the debtor's opinion of value. In the absence of further evidence explaining away this discrepancy, the court concludes the debtor has not satisfied the burden under 11 U.S.C. § 506(a). Therefore, the plan does not comply with 11 U.S.C. § 1325(a)(5) because it does not pay the creditor the present value of its secured claim.

Further the objection to the interest rate is sustained. It is the debtor's burden to establish that the plan will pay the objecting creditor the present value of its secured claim. 11 U.S.C. § 1325(a)(5)(B)(ii). This requires that the debtor pay the movant a market rate of interest. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987). The debtor has come forward with no admissible evidence demonstrating that 10.00% is a market rate of interest. It is the "debtor's characteristics [that] determine the interest rate. The creditor's characteristics are irrelevant." El Camino Real, 818 F.2d at 1506. The debtor has provided no such evidence.

In the absence of admissible, complete and persuasive evidence from the debtors, the contract rate of interest of 11.83% is presumptively the interest rate that must be paid to the secured creditor. Accord Smithwick v. Greentree Financial (In re Smithwick), 121 F.3d 211 (5th Cir. 1997), *rehearing denied*, 132 F.3d 1458 (5th Cir. 1997), *cert. denied*, 523 U.S. 1074 (1998). If the contract rate is too low, such must be proven by the creditor. If the contract rate is too high, such must be proven by the debtor. Because the contract rate is not paid and because the debtor has not rebutted the presumption or otherwise established a market rate of interest under El Camino Real or Fowler, the plan cannot be confirmed consistent with 11 U.S.C. § 1325(a)(5)(B)(ii).

102. 02-22959-A-13J BOYCE/JANET HURLBUT — HEARING - OBJECTION TO CONFIRMATION OF DEBTORS' CHAPTER 13 PLAN AND TO THE MOTION TO VALUE THE COLLATERAL OF TOYOTA MOTOR CREDIT CORP. 4-24-02 [19]
RLE #1

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The objection is sustained. The court incorporates the findings and conclusions in its ruling on Motion Control No. MWB #1.

103. 00-33060-A-13J DAVID/YOLANDA SOWASH — HEARING - MOTION TO APPROVE SECOND MODIFIED PLAN 4-23-02 [68]
AMH #2

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied without prejudice because there is no proof of service indicating that the motion has been served on any party in interest. Local Bankruptcy Rule 9014-1 provides: "*Proof of service of the notice of hearing, the motion and supporting papers shall be filed with the Clerk concurrently with said pleadings or not more than three (3) court days after the filing of the motion. Proofs of service should be in the form of certificates of service which shall be attached as the last document to the pleadings served.*" Any deadline to confirm a modified plan is extend by 45 days.

104. 00-33060-A-13J DAVID/YOLANDA SOWASH — HEARING - OBJECTION TO CLAIM NO. 4 OF BANK OF AMERICA MORTGAGE 4-23-02 [71]
AMH #3

Final Ruling: The debtor has failed to respond to the matter on calendar. Because the debtor has come forward with no opposition or response, this matter is suitable for disposition without oral

argument. The motion is denied without prejudice because there is no proof of service indicating that the motion has been served on any party in interest. Local Bankruptcy Rule 9014-1 provides: "*Proof of service of the notice of hearing, the motion and supporting papers shall be filed with the Clerk concurrently with said pleadings or not more than three (3) court days after the filing of the motion. Proofs of service should be in the form of certificates of service which shall be attached as the last document to the pleadings served.*"

105. 02-21661-A-13J CINDY L. FLATLEY
PRJ #1

HEARING - MOTION TO CONFIRM FIRST AMENDED PLAN AND ORDER CONFIRMATION
5-3-02 [19]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

106. 01-29263-A-13J JAMES/LISA WILSON
WCS #1

HEARING - DEBTOR'S MOTION TO MODIFY CONFIRMED PLAN
5-3-02 [20]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

107. 02-21265-A-13J DENNIS/KAREN WARE
MPD #1
GMAC MORTGAGE CORPORATION, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
5-6-02 [13]
PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. Movant seeks relief from stay with respect to Debtors' real property, located at 11645 Kirkwood Street in Herald, California. Movant is secured by a deed of trust encumbering the property. Debtors' plan requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtors have not made approximately two (2) post-petition payments (March 2002 through April 2002) to Movant, for a total of $3,648.40. Debtors oppose, stating that they have made the payments.

Movant's accounting reflects that Debtors made an $885.86 payment in March 2002 and a $1,126.86 payment in April 2002. While Movant's

accounting shows that the total amount due for March and April of 2002 was $3,648.40, the $2,473.58 amount due for March 2002 is unexplainable, especially in light of the $1,082.57 amount due for April 2002. The court agrees with Debtors. They are either post-petition current or substantially current. The motion is denied without prejudice. Because Debtors were current with their mortgage payments at the time Movant filed this motion, the court awards no attorney's fees and costs.

108. 02-23765-A-13J ROBERT/PATRICIA TAYLOR HEARING - OBJECTION
SAC #1 TO CONFIRMATION OF CHAPTER 13 PLAN BY AMERIQUEST MORTGAGE CO.
5-2-02 [17]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The objection is sustained. The plan proposes an initial plan payment of $100.00 a month for three months. The plan payment then steps up to $963.00 for 57 months. There is no evidence in the record that allows the court to conclude that the debtor will be able to afford to make this increased plan payment. Schedules I and J show disposable of income of $100.00 . These schedules also indicate that the debtor anticipates no changes in his income or expenses for a year.

The debtor has 15 days to file an amended or modified plan and a motion to confirm it. Once filed, the debtor has 30 days to obtain confirmation. If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

109. 02-23765-A-13J ROBERT/PATRICIA TAYLOR HEARING - OBJECTION
SW #1 TO DEBTORS' CHAPTER 13 PLAN AND OPPOSITION TO MOTION TO VALUE COLLATERAL OF GMAC
5-13-02 [21]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The objections are sustained.

The objection to the $14,125.00 valuation of the objecting creditor's collateral, a motor vehicle, is sustained in part. The plan includes a motion by the debtor urging a $14,125.00 valuation. The valuation motion includes the declaration of the debtor testifying that the subject vehicle has a value of $14,125.00. A debtor may testify regarding the value of property owned by the debtor. Fed.R.Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

The creditor maintains that the value of the vehicle should be determined by the retail value suggested by the Kelley Blue Book, $22,160.00. Nothing in Rash v. Associates Commercial, 138 L.Ed.2d 148

(1997), compels the conclusion that retail value is replacement value. Indeed, it suggests the two are not equivalent. Id. at 160, n. 6 ("Whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property. We note, however, that replacement value, in this context, should not include certain items. For example, where the proper measure of the replacement value of a vehicle is its retail value, an adjustment to that value may be necessary: A creditor should not receive portions of the retail price, if any, that reflect the value of items the debtor does not receive when he retains his vehicle, items such as warranties, inventory storage, and reconditioning."). Therefore, the creditor's argument that the court should simply adopt the retail valuation is not persuasive.

The creditor also argues that the court should adopt a valuation that is midpoint between the Kelley Blue Book retail and wholesale valuations. The court will not value vehicles based on averages. This is not consistent with the Supreme Court's ruling in Rash v. Associates Commercial, 138 L.Ed.2d 148 (1997). The Supreme Court in Rash rejected valuations that were based on the midpoint between the wholesale and retail value or a "split-the-difference" approach as suggested by the creditor. The Supreme Court held:

"Nor are we persuaded that the split-the-difference approach adopted by the Seventh Circuit provides the appropriate solution. See In re Hoskins, 102 F.3d, at 316. Whatever the attractiveness of a standard that picks the midpoint between foreclosure and replacement values, there is no warrant for it in the Code. [Footnote omitted.] Section 506(a) calls for the value the property possesses in light of the 'disposition or use' in fact 'proposed,' not the various dispositions or uses that might have been proposed. Cf. BFP v. Resolution Trust Corporation, 511 U.S. 531, 540, 114 S.Ct. 1757, 1762, 128 L.Ed.2d 556 (1994) (court-made rule defining, for purposes of Code's fraudulent transfer provision, 'reasonably equivalent value' to mean 70% of fair market value 'represent[s][a] policy determinatio[n] that the Bankruptcy Code gives us no apparent authority to make'). The Seventh Circuit rested on the "economics of the situation,' In re Hoskins, 102 F.3d, at 316, only after concluding that the statute suggests no particular valuation method. We agree with the Seventh Circuit that 'a simple rule of valuation is needed' to serve the interests of predictability and uniformity. Id., at 314. We conclude, however, that § 506(a) supplies a governing instruction less complex than the Seventh Circuit's 'make two valuations, then split the difference' formulation." [Emphasis added.]

Thus, the mechanical use of the value midpoint between high/retail and low/wholesale, or any other valuations, is not appropriate. Id. at 159-160. This approach to valuation adopted in Matter of Hoskins, 102 F.3d 311 (7th Cir. 1996) but rejected in Rash. To the extent there are courts that continue to utilize this methodology, the rulings of those courts are not binding on this court.

To the extent that such a methodology is valid, this court prefers the

private party valuation database in the Kelley Blue Book. This is the value "you might expect to pay for a used car when purchasing from a private party." In other words, the replacement cost of the vehicle. This value does not include warranties, inventory storage, and reconditioning charges as does the retail valuation in the Kelley Blue Book. The private party value in this case is $19,170.00.

The court concludes the replacement value of the vehicle was $19,170.00 on the date of the petition. Because the plan does not provide for the payment of this amount, the objection is sustained.

110. 99-23965-A-13J PEDRO T. AVILA — HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM OF RESURGENT CAPITAL SERVICES 4-5-02 [43]
JPJ #1

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The objection is sustained. The last date to file a timely proof of claim was September 18, 1999. The proof of claim was filed on November 1, 1999. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

111. 98-22969-A-13J JOHN W. TIPTON AND KATHLEEN B. GALLOWAY — HEARING - MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION 4-22-02 [34]
RD #1

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

112. 01-32370-A-13J VIOLA V. MCGARR — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 4-29-02 [19] PART II
MPD #1
GMAC MORTGAGE CORP., VS.

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the

movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay four monthly post-petition installments. This plan breach is cause to terminate the automatic stay. Fees and costs of $660 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent this statute remains applicable.

113. 02-20471-A-13J VALERIE RENEE COTTON
AC #1
WESTERN SUNRISE, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
4-29-02 [8]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay two monthly post-petition installments. This plan breach is cause to terminate the automatic stay. Fees and costs of $660 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent this statute remains applicable.

114. 01-23673-A-13J JON/LENA WAYCOTT
RSS #1
CITIFINANCIAL MORTAGE CO., INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
5-2-02 [40]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The

motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay three monthly post-petition installments. This plan breach is cause to terminate the automatic stay. Fees and costs of $660 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent this statute remains applicable.

115. 98-25073-A-13J RICHARD/LINDA GOSS — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
M&B #1 — 5-2-02 [57]
HOMESIDE LENDING, INC., VS. — PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay four monthly post-petition installments. Fees and costs of $660 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent this statute remains applicable.

116. 02-20874-A-13J LEROY J. STAMPER — HEARING - MOTION TO CONFIRM FIRST AMENDED PLAN
EJH #1 — 5-3-02 [11]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11

U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

117. 01-30175-A-13J DAVID/JANIS ARMSTRONG HEARING - TRUSTEE'S
JPJ #2 OBJECTION TO ALLOWANCE OF
CLAIM OF GOLDEN ONE
4-12-02 [38]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The creditor has filed two different proofs of claim for the same debt. The first was filed on October 24, 2001. The second was filed on November 21, 2001. The later proof of claim does not indicate that it is amending or replacing the earlier proof of claim. However, from the information in the proofs of claim it is clear that they are duplicative. Therefore, the earlier proof of claim is disallowed and the latest proof of claim is allowed.

118. 01-25577-A-13J ALAN/LISA GERVOLSTAD HEARING - TRUSTEE'S
JPJ #4 OBJECTION TO ALLOWANCE OF CLAIM
OF PHILLIPS & COHEN ASSOCIATES
4-5-02 [33]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The last date to file a timely proof of claim was September 11, 2001. The proof of claim was filed on January 4, 2002. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990). **Note that the court file contains no proof of claim by this creditor. If the trustee has an endorsed filed copy of one, he is requested to furnish a copy to the clerk at the hearing.**

119. 02-22377-A-13J MELVIN/VICTORIA HEARING - OBJECTIONS
RTD #2 WILLIAMS TO CONFIRMATION OF PLAN AND
OPPOSITION TO DEBTORS' MOTION
TO VALUE COLLATERAL OF
SACRAMENTO CREDIT UNION
5-2-02 [18]

Final Ruling: The parties have continued the hearing on this matter to June 11, 2002, at 9:00 a.m.

120. 02-20679-A-13J THOMAS/SHAWN HENSLEY
DM #1

HEARING - MOTION BY DEBTORS FOR CONFIRMATION OF AMENDED CHAPTER 13 PLAN 4-23-02 [11]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The objection is sustained. The debtor is making a voluntary contribution to a 401k pension plan and repaying by a payroll deduction a loan from it.

The objection to the contribution to a 401K plan is sustained. Voluntary contributions to a 401k plan during the pendency of a Chapter 13 plan deprives unsecured creditors of disposable income. The issue of whether a Chapter 13 debtor may make ongoing voluntary contributions to a pension plan has been addressed by several courts. Those courts have generally found that continued voluntary contributions to a retirement plan deprives unsecured creditors of a portion of a debtor's disposable income. See In re Festner, 54 B.R. 532 (Bankr. E.D. N.C. 1985), In re Fountain, 142 B.R. 135 (Bankr. E.D. Va. 1992), In re Ward, 129 B.R. 664 (Bankr. W.D. Okl. 1991), In re Bruce, 80 B.R. 927 (Bankr. C.D. Ill. 1987). One court, Matter of Colon Vazquez, 111 B.R. 19 (Bankr. D.P.R. 1990), has permitted a debtor to continue to contribute to a pension during the pendency of a case. The facts of that case, however, indicate that Puerto Rican law required the debtor to make the contribution. Such is not the case here, or least the debtors have not proven such.

The objection to the repayment of a loan from the retirement account is also sustained. A plan which permits a debtor to repay an obligation secured by a non-income producing or an exempt asset not necessary to the plan sacrifices disposable income which could go to unsecured creditors in order to salvage an asset which will produce nothing for the unsecured creditors. Nor does such an asset provide for the debtor’s present support. “Although investments may be financially prudent, they certainly are not necessary expenses for the support of the debtors or their dependents. [Footnote omitted.] Investments of this nature are therefore made with disposable income; disposable income is not what is left after they are made.” In re Lindsey, 122 B.R. 157, 158 (Bankr. M.D. Fla. 1991). See also, In re Festner, 54 B.R. 532, 533 (Bankr. E.D. N.C. 1985); N.Y. City Emp. Retirement System v. Villarie (In re Villarie), 648 F.2d 810, 812 (2d Cir. 1981); In re Jones, 138 B.R. 536 (Bankr. S.D. 1991). Here the debtors wish to repay a loan secured by a 401k plan even though general unsecured claims are not being paid in full. The court recognizes that the failure to repay this loan will cause adverse tax consequences to the debtors. Any tax liabilities, however, may be paid through a Chapter 13 plan or outside of the plan. 11 U.S.C. section 1305(a).

Although the Ninth Circuit has not ruled on this issue, the Sixth and Third Circuits have held that a debtor cannot repay pension or retirement loans while in a chapter 13. Harshbarger v. Pees (In re

Harshbarger), 66 F.3d 775, 777 (6th Cir. 1995); Tierney v. Dehart (In re Tierney), 195 F.3d 177 (3d Cir. 1999). In Tierney, the court held:

"[R]epayment of amounts withdrawn from retirement accounts is not reasonably necessary for a debtor's maintenance or support, requiring that payments be made, if at all, only after satisfaction of all unsecured debts. [Citations omitted.] . . . If the Debtors do not make the proposed payments, the retirement systems will deduct the balance owed from their retirement accounts. The payments, even if classified as debt payments, therefore, will increase their retirement benefits rather than repay the retirement systems or ensure the viability of either pension system. In effect, the payments are contributions to the Debtors' retirement accounts. Voluntary contributions to retirement plans, however, are not reasonably necessary for a debtor's maintenance or support and must be made from disposable income. [Citations omitted.] As one bankruptcy court explained in refusing to confirm a plan that proposed to make mortgage payments on non-residential property rather than satisfy unsecured creditors, "[a]lthough investments may be financially prudent, they certainly are not necessary expenses for the support of the debtors or their dependents. Investments of this nature are therefore made with disposable income; disposable income is not what is left after they are made. In re Lindsey, 122 B.R. 157, 158 (Bankr. M.D. Fla. 1991). Debtors' proposed payments, regardless of their financial prudence, must be understood as being made out of "disposable income" under the terms of their proposed plans."

In re Tierney, 195 F.3d at 180-181. The court agrees with this holding. Therefore, the plan, which pays a 53.8% dividend on unsecured claims, does not comply with 11 U.S.C. § 1325(b).

121. 00-22480-A-13J JANET BOGUE
LJB
CHASE MANHATTAN MORTGAGE CORP., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
5-3-02 [68]
PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted.

Movant seeks relief from stay with respect to Debtor's real property, located at 19225 Eighmy Road in Cottonwood, California. Movant is secured by a deed of trust encumbering the property. Debtor's plan, which identifies Movant as Advanta Mortgage, requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtor has not made approximately two (2) post-petition payments (March 2002 through April 2002) to Movant, for a total of $2,246.40, excluding attorney's fees and costs.

The failure to make post-petition payments to Movant is cause for the granting of relief from stay. Accordingly, the motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a

nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d). The loan documentation contains an attorney's fee provision and Movant is an over-secured creditor. Fees and costs of $675 or, if less, the amount actually payable by Movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against Movant's collateral. This award may not be enforced against Debtor personally. However, if Debtor wishes to cure the loan default, these fees must be paid by Debtor directly to Movant.

The opposition filed by Debtor on May 22 is stricken as untimely. Local Bankruptcy Rule 9014-1, Part II(c) requires that opposition be filed five court days prior to the hearing. Debtor's opposition was filed four court days prior to the hearing.

122. 01-24480-A-13J DOUGLAS/BONNIE LEE
ASW #1
FIRST NATIONWIDE MORT. CORP., VS

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
4-25-02 [18]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument.The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay three monthly post-petition installments. This is cause to terminate the automatic stay. The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of $675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

123. 01-34883-A-13J BRADY LAVELL FOWLER
TJS #1
FEDERAL NATIONAL MORTGAGE ASSN., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
4-25-02 [15]
PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. Movant seeks relief from stay with respect to Debtor's real property, located at 893 47th Street in Oakland, California. Movant is secured by a deed of trust encumbering the property. Debtor's plan, which identifies Movant as First Horizon, requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtor has not made approximately two (2) post-petition payments (February 2002 through March 2002) to Movant, for a total of $2,222.76, excluding late charges and attorney's fees. Debtor opposes, stating that he will cure the delinquency in full by the hearing date.

Accordingly, the motion is granted in part pursuant to 11 U.S.C. § 362(d)(1). Debtor has admittedly not paid approximately three (3) post-petition direct payments required by the plan. If these overdue post-petition direct payments, plus the post-petition direct installment due in May 2002, are not received by Movant's counsel on or before May 31, 2002, the stay will be terminated on the ex parte application of the movant (if supported by a sufficient declaration establishing a default of the order) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d). The loan documentation contains an attorney's fee provision and Movant is an over-secured creditor. Fees and costs of $675 or, if less, the amount actually payable by Movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that Movant's proof of claim is amended and served upon the Trustee.

124. 99-22684-A-13J ANTHONY J. LOPEZ
JPJ #4

HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM OF THE ASSOCIATES
4-12-02 [58]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The last date to file a timely proof of claim was July 7, 1999. The proof of claim was filed on November 19, 1999. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

125. 02-22085-A-13J STEPHEN/ROCHELLE ROBELLO
CLH #1

HEARING - DEBTORS' MOTION FOR ORDER CONFIRMING CHAPTER 13 PLAN AND VALUING COLLATERAL
5-3-02 [32]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

The motion also includes a valuation concerning the collateral of several creditors. These creditors not opposed the motions and their defaults are entered. These motions pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), are granted.

Wells Fargo Auto's collateral had a value of $16,950.00 on the date the petition was filed. That date is the effective date of the plan. $16,950.00 of its claim is an allowed secured claim. When paid $16,950.00 and upon completion of the plan, the secured claim shall be satisfied in full and the collateral free of this lien. Provided a timely proof of claim is filed, the remainder of this claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

CitiCapital's collateral had a value of $30,000.00 on the date the petition was filed. That date is the effective date of the plan. $30,000.00 of its claim is an allowed secured claim. When paid $30,000.00 and upon completion of the plan, the secured claim shall be satisfied in full and the collateral free of this lien. Provided a timely proof of claim is filed, the remainder of this claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

CitiCorp Vendor Financial's collateral had a value of $38,000.00 on the date the petition was filed. That date is the effective date of the plan. $38,000.00 of its claim is an allowed secured claim. When paid $38,000.00 and upon completion of the plan, the secured claim shall be satisfied in full and the collateral free of this lien. Provided a timely proof of claim is filed, the remainder of this claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

WFS Financial's collateral had a value of $8,965.00 on the date the petition was filed. That date is the effective date of the plan. $8,965.00 of its claim is an allowed secured claim. When paid $8,965.00 and upon completion of the plan, the secured claim shall be satisfied in full and the collateral free of this lien. Provided a timely proof of claim is filed, the remainder of this claim is allowed as a general unsecured claim unless previously paid by the trustee as a

secured claim.

HRS/The Bedroom's collateral had a value of $400.00 on the date the petition was filed. That date is the effective date of the plan. $400.00 of its claim is an allowed secured claim. When paid $400.00 and upon completion of the plan, the secured claim shall be satisfied in full and the collateral free of this lien. Provided a timely proof of claim is filed, the remainder of this claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

126. 00-32986-A-13J JACQUELINE GLADYS OELKE
JLK #1
HEARING - MOTION TO APPROVE DEBTOR'S FIRST AMENDED PLAN
4-30-02 [37]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

127. 02-24286-A-13J KEVIN/LUCY KELLY
EBN #1
TRAVIS CREDIT UNION, VS.
HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
5-6-02 [10]
PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. Movant seeks relief from stay with respect to Debtors' 1999 Chevrolet S-10 Pickup vehicle. Debtors' yet unconfirmed plan schedules Movant's claim as a class 2 secured claim, payable through the plan. Debtors oppose, arguing that their plan provides for the vehicle payments through the plan.

When a debtor is making payments to a creditor through the Chapter 13 plan, the Trustee will collect such payments until the plan is confirmed. Only after confirmation, the Trustee will disburse the accumulated payments to the creditor. In the instant case, Debtors' yet unconfirmed plan schedules Movant's claim as a class 2 secured claim, payable through the plan. Consequently, Movant will not start receiving payments on its claim until after Debtors obtain plan confirmation. Although Debtors are required to make their payments to the Chapter 13 Trustee, Movant has provided the court with no evidence that Debtors are delinquent in plan payments to the Trustee. Further, it appears from the file that the case is being diligently prosecuted and is proceeding to confirmation. Accordingly, the motion is denied without prejudice. Debtors' performance of the proposed plan and the timely prosecution of the case are sufficient adequate protection of Movant's interest in the vehicle. No fees and costs are awarded.

128. 00-24389-A-13J RICHARD/KATHERINE MITCHELL
MAP #1
NORMAN SWANSTROM TRUST, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
4-24-02 [63]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan, which identifies the movant as Trust Home Loans, requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay 24 monthly post-petition installments. This is cause to terminate the automatic stay. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

129. 01-29389-A-13J CAROLINE C. MORALES
JPJ #1

HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM OF GREENPOINT MORTGAGE FUNDING
4-12-02 [11]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The objection is sustained and the claim is disallowed. This is without prejudice to the debtor filing a claim on behalf of the creditor as permitted by 11 U.S.C. § 501(c), Fed.R.Bankr.P. 3007, and General Order 01-02, ¶ 6(f). The General Order provides: "*If a creditor fails to file a proof of claim within the time required by FRBP 3002(c) or section 502, the debtor or the Trustee may (but are not required to) file a proof of claim on behalf of the creditor pursuant to FRBP 3004. The time for the filing of such a claim is extended to 90 days after service on the debtor or his counsel of the Notice of Filed Claims.*" The Notice of Filed Claims was served on March 29, 2002.

The last date for the creditor to file a timely proof of claim was December 12, 2001. The proof of claim was filed on January 25, 2002. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

To the extent the response by the creditor is a request that the court permit a late claim by the creditor, the request is denied. The court may give permission to a creditor to file a claim after the bar date only under the circumstances specified in Fed.R.Bankr.P. 3002(c)(1)-(5). None of these circumstances is present in this case. The law of this circuit is clear. The bankruptcy court has no discretion to allow a late filed claim absent the applicability of Rule 3002(c)(1)-(5). In re Osborne, 76 F.3d at 311; In re Tomlan, 102 B.R. at 795; In re Coastal Alaska, 920 F.2d at 1432-33.

The applicability of Fed.R.Bankr.P. 3002(c) and not Fed.R.Bankr.P. 3003(c)(3) to this case, and the wording of Fed.R.Bankr.P. 9006(b)(3) prevent the Supreme Court's decision in Pioneer Investment Services Company v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380 (1993), from being of assistance to the creditors. Pioneer involved a chapter 11 proceeding. In chapter 11 cases, the filing of proofs of claim is governed by Rule 3003 and not Rule 3002. Rule 3002 applies to chapter 13 cases. Rule 9006(b)(3) does not restrict extensions of the time to file proofs of claim in chapter 11 cases. Consequently, under Fed.R.Bankr.P. 9006(b)(1), the court may permit a creditor to file a proof of claim in a chapter 11 case after the bar date established under Rule 3003 has expired if excusable neglect prevented the filing of a timely proof of claim.

In Pioneer, the Supreme Court determined what constituted excusable neglect under Rule 9006(b)(1). That decision has little or no applicability here. In a chapter 13 case, Rule 9006(b)(1) is not applicable; Rules 9006(b)(3) and 3002(c) are applicable. And, as noted above Rule 3002(c) does not permit enlargement of the time to file proofs of claim after the expiration of the deadline even when excusable neglect is present.

130. 02-20091-A-13J JACK A. DUMIN — HEARING - AMENDED MOTION TO VALUE COLLATERAL OF BMW FINANCIAL SERVICES 4-30-02 [27]
CYB #1

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied without prejudice. The motion is neither verified nor accompanied by evidence supporting the factual assertions in the motion. Simply asking the court to take judicial notice of the schedules does not overcome the lack of evidence.

131. 02-20091-A-13J JACK A. DUMIN — HEARING - MOTION TO VALUE COLLATERAL OF GATEWAY CREDIT SERVICE 4-24-02 [21]
CYB #2

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion

is denied without prejudice. The motion is neither verified nor accompanied by evidence supporting the factual assertions in the motion.

132. 96-32393-A-13J MARK/DARYL AGUILAR
JPJ #1
HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM OF HOUSEHOLD RETAIL SERVICES
4-12-02 [72]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The last date to file a timely proof of claim was February 25, 1997. The proof of claim was filed on April 15, 1997. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

133. 99-21593-A-13J GERALD/TAMMIE LAYTON
AMH #1
HEARING - MOTION TO APPROVE SIXTH MODIFIED PLAN
4-19-02 [94]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

134. 00-33495-A-13J CAROLINE E. WEHREN
MB #1
FLEET MORTGAGE CORP., VS.
HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
5-2-02 [16]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay three post-petition installments. This is cause to terminate the automatic stay. The loan documentation contains an attorney's fee provision and the movant is an

over-secured creditor. Fees and costs of $675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

135.	02-24296-A-13J SW #1	JEFFREY/JENNIFER SLECHTA	HEARING - OBJECTION TO DEBTORS' CHAPTER 13 PLAN AND OPPOSITION TO MOTION TO VALUE COLLATERAL OF GMAC 5-1-02 [9]

Final Ruling: The debtor has failed to respond to the matter on calendar. Because the debtor has come forward with no opposition or response, this matter is suitable for disposition without oral argument. The objection is sustained.

The objection to the $11,680.00 valuation of the objecting creditor's collateral, a motor vehicle, is sustained in part. The plan includes a motion by the debtor urging a $11,680.00 valuation. The valuation motion includes the declaration of the debtor testifying that the subject vehicle has a value of $11,680.00. A debtor may testify regarding the value of property owned by the debtor. Fed.R.Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

The creditor maintains that the value of the vehicle should be determined by the retail value suggested by the Kelley Blue Book, $14,240.00. Nothing in Rash v. Associates Commercial, 138 L.Ed.2d 148 (1997), compels the conclusion that retail value is replacement value. Indeed, it suggests the two are not equivalent. Id. at 160, n. 6 ("Whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property. We note, however, that replacement value, in this context, should not include certain items. For example, where the proper measure of the replacement value of a vehicle is its retail value, an adjustment to that value may be necessary: A creditor should not receive portions of the retail price, if any, that reflect the value of items the debtor does not receive when he retains his vehicle, items such as warranties, inventory storage, and reconditioning."). Therefore, the creditor's argument that the court should simply adopt the retail valuation is not persuasive.

The creditor also argues that the court should adopt a valuation that is midpoint between the Kelley Blue Book retail and wholesale valuations. The court will not value vehicles based on averages. This is not consistent with the Supreme Court's ruling in Rash v. Associates Commercial, 138 L.Ed.2d 148 (1997). The Supreme Court in Rash rejected valuations that were based on the midpoint between the wholesale and retail value or a "split-the-difference" approach as suggested by the

creditor. The Supreme Court held:

"Nor are we persuaded that the split-the-difference approach adopted by the Seventh Circuit provides the appropriate solution. See In re Hoskins, 102 F.3d, at 316. Whatever the attractiveness of a standard that picks the midpoint between foreclosure and replacement values, there is no warrant for it in the Code. [Footnote omitted.] Section 506(a) calls for the value the property possesses in light of the 'disposition or use' in fact 'proposed,' not the various dispositions or uses that might have been proposed. Cf. BFP v. Resolution Trust Corporation, 511 U.S. 531, 540, 114 S.Ct. 1757, 1762, 128 L.Ed.2d 556 (1994) (court-made rule defining, for purposes of Code's fraudulent transfer provision, 'reasonably equivalent value' to mean 70% of fair market value 'represent[s][a] policy determinatio[n] that the Bankruptcy Code gives us no apparent authority to make'). The Seventh Circuit rested on the "economics of the situation,' In re Hoskins, 102 F.3d, at 316, only after concluding that the statute suggests no particular valuation method. We agree with the Seventh Circuit that 'a simple rule of valuation is needed' to serve the interests of predictability and uniformity. Id., at 314. We conclude, however, that § 506(a) supplies a governing instruction less complex than the Seventh Circuit's 'make two valuations, then split the difference' formulation." [Emphasis added.]

Thus, the mechanical use of the value midpoint between high/retail and low/wholesale, or any other valuations, is not appropriate. Id. at 159-160. This approach to valuation adopted in Matter of Hoskins, 102 F.3d 311 (7th Cir. 1996) but rejected in Rash. To the extent there are courts that continue to utilize this methodology, the rulings of those courts are not binding on this court.

To the extent that such a methodology is valid, this court prefers the private party valuation database in the Kelley Blue Book. This is the value "you might expect to pay for a used car when purchasing from a private party." In other words, the replacement cost of the vehicle. This value does not include warranties, inventory storage, and reconditioning charges as does the retail valuation in the Kelley Blue Book. The private party value in this case is $11,680.00.

The court concludes the replacement value of the vehicle was $11,680.00 on the date of the petition. Because the plan does not provide for the payment of this amount, the objection is sustained.

The objection to the interest rate paid on the secured claim is sustained. The plan pays 10%. The debtors have failed to produce any evidence that their plan will pay the present value of the secured portion of the objecting creditor's claim. 11 U.S.C. § 1325(a)(5)(B)(ii). This requires that they pay a market rate of interest. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987). The debtors have come forward with no evidence, as was their burden, which permits the court to determine whether 10% is a market rate of interest. It is the "debtor's

characteristics [that] determine the interest rate. The creditor's characteristics are irrelevant." El Camino Real, 818 F.2d at 1506. In the absence of contrary evidence, the contract rate of interest is presumptively the interest rate that must be paid to a secured creditor in connection with a chapter 13 plan. Accord Smithwick v. Greentree Financial (In re Smithwick), 121 F.3d 211 (5th Cir. 1997), rehearing denied, 132 F.3d 1458 (5th Cir. 1997), cert. denied, 523 U.S. 1074 (1998). If the contract rate is too low, such must be proven by the creditor. If the contract rate is too high, such must be proven by the debtor. Because the contract rate of 15.85% is not paid by the plan and because the debtor has not rebutted the presumption, the plan cannot be confirmed consistent with 11 U.S.C. § 1325(a)(5)(B)(ii).

The objection to the additional plan provision regarding attorneys' fee is also sustained. Debtor's counsel may either opt in or out of the fee Guidelines. If counsel opts in, all fees awarded by the court must be paid pursuant to the Guidelines which state: ". . . *all fees shall be paid through the plan unless otherwise ordered. Absent court authorization, the attorney may not receive fees directly from the debtor other than the pre-petition retainer. After plan confirmation, the Chapter 13 Trustee shall pay the lesser of 50% of the plan payment or $250.00 of each plan payment to the attorney until the fee is paid in full.*" Counsel has opted into the Guidelines but has stated in the additional plan provisions that after the initial fees paid at the beginning of the case are paid to him by the trustee, any further fees will be paid in full before claims are paid anything further. This is contrary to the Guidelines. If counsel wants his fees paid before claims rather than with the claims, he must opt out of the Guidelines and file regular fee applications.

The debtor has 15 days from service of an order sustaining the objection to file an amended or modified plan and a motion to confirm it. Once filed, the debtor has 30 days to obtain confirmation. If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

136. 02-20997-A-13J BRET/SHARRON DOUGHERTY — HEARING - MOTION TO VALUE COLLATERAL OF FORD MOTOR CREDIT 4-23-02 [25]
MWB #1

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The objection is sustained.

The objection to the $7,000.00 valuation of the objecting creditor's collateral, a motor vehicle, is sustained in part. The plan includes a motion by the debtor urging a $7,000.00 valuation. The valuation motion includes the declaration of the debtor testifying that the subject vehicle has a value of $7,000.00. A debtor may testify regarding the value of property owned by the debtor. Fed.R.Evid. 701;

So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

The creditor maintains that the value of the vehicle should be determined by the retail value suggested by the Kelley Blue Book, $11,965.00. Nothing in Rash v. Associates Commercial, 138 L.Ed.2d 148 (1997), compels the conclusion that retail value is replacement value. Indeed, it suggests the two are not equivalent. Id. at 160, n. 6 ("Whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property. We note, however, that replacement value, in this context, should not include certain items. For example, where the proper measure of the replacement value of a vehicle is its retail value, an adjustment to that value may be necessary: A creditor should not receive portions of the retail price, if any, that reflect the value of items the debtor does not receive when he retains his vehicle, items such as warranties, inventory storage, and reconditioning."). Therefore, the creditor's argument that the court should simply adopt the retail valuation is not persuasive.

To the extent the creditor also argues that the court should adopt a valuation that is midpoint between the Kelley Blue Book retail and wholesale valuations, the argument is rejected. The court will not value vehicles based on averages. This is not consistent with the Supreme Court's ruling in Rash v. Associates Commercial, 138 L.Ed.2d 148 (1997). The Supreme Court in Rash rejected valuations that were based on the midpoint between the wholesale and retail value or a "split-the-difference" approach as suggested by the creditor. The Supreme Court held:

"Nor are we persuaded that the split-the-difference approach adopted by the Seventh Circuit provides the appropriate solution. See In re Hoskins, 102 F.3d, at 316. Whatever the attractiveness of a standard that picks the midpoint between foreclosure and replacement values, there is no warrant for it in the Code. [Footnote omitted.] Section 506(a) calls for the value the property possesses in light of the 'disposition or use' in fact 'proposed,' not the various dispositions or uses that might have been proposed. Cf. BFP v. Resolution Trust Corporation, 511 U.S. 531, 540, 114 S.Ct. 1757, 1762, 128 L.Ed.2d 556 (1994) (court-made rule defining, for purposes of Code's fraudulent transfer provision, 'reasonably equivalent value' to mean 70% of fair market value 'represent[s][a] policy determinatio[n] that the Bankruptcy Code gives us no apparent authority to make'). The Seventh Circuit rested on the "economics of the situation,' In re Hoskins, 102 F.3d, at 316, only after concluding that the statute suggests no particular valuation method. We agree with the Seventh Circuit that 'a simple rule of valuation is needed' to serve the interests of predictability and uniformity. Id., at 314. We conclude, however, that § 506(a) supplies a governing instruction less complex than the Seventh Circuit's 'make two valuations, then split the difference' formulation." [Emphasis added.]

Thus, the mechanical use of the value midpoint between high/retail and

low/wholesale, or any other valuations, is not appropriate. Id. at 159-160. This approach to valuation adopted in Matter of Hoskins, 102 F.3d 311 (7th Cir. 1996) but rejected in Rash. To the extent there are courts that continue to utilize this methodology, the rulings of those courts are not binding on this court.

To the extent that such a methodology is valid, this court prefers the private party valuation database in the Kelley Blue Book. This is the value "you might expect to pay for a used car when purchasing from a private party." In other words, the replacement cost of the vehicle. This value does not include warranties, inventory storage, and reconditioning charges as does the retail valuation in the Kelley Blue Book. The private party value in this case is $8,040.00.

The court concludes the replacement value of the vehicle was $8,040.00 on the date of the petition. Because the plan does not provide for the payment of this amount, the objection is sustained.

The court will nonetheless confirm the plan if it is modified to reflect the foregoing valuation and if the term and/or the monthly plan payment is adjusted in order to pay the resulting higher claim.

137. 01-23598-A-13J REXANN MARGARET HERD — HEARING - MOTION FOR ORDER MODIFYING CONFIRMED CHAPTER 13 PLAN
MWB #2 — 5-1-02 [24]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.